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Volume VII.

(EVIDENCE FOR COMPLAINANT.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911

No. 446

THE UNITED STATES OF AMERICA, APPELLANT,

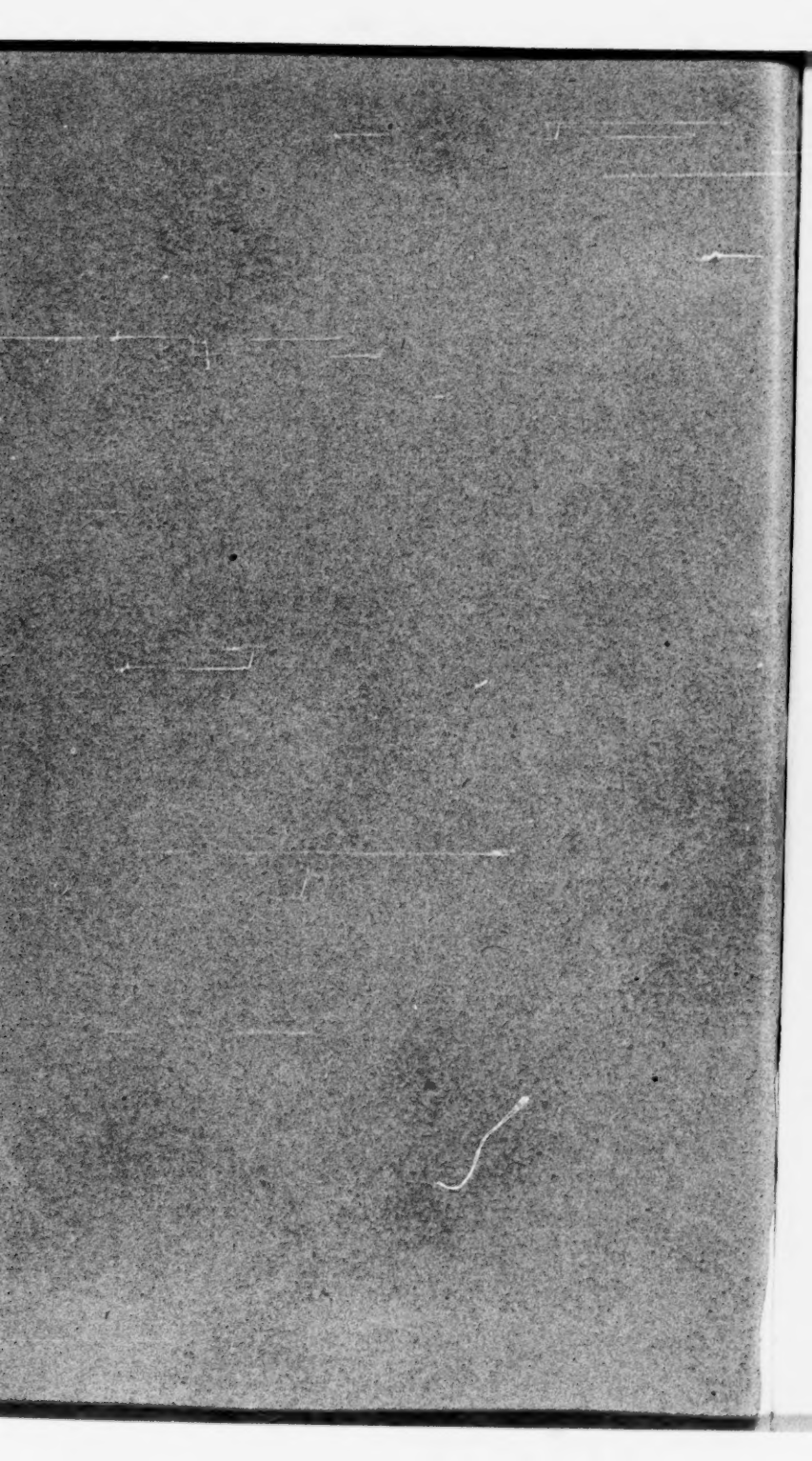
vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED OCTOBER 9, 1911.

(22896)



No. 993—In Equity.

IN THE

Circuit Court of the United States

FOR THE DISTRICT OF UTAH.

THE UNITED STATES OF AMERICA,
Complainant,

v.

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY; THE OREGON RAILROAD & NAVIGATION COMPANY; THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; FARMERS' LOAN & TRUST COMPANY; EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, and WILLIAM A. CLARK,
Defendants.

EVIDENCE AND PROCEEDINGS BEFORE THE SPECIAL EXAMINER.

Volume VII.—Complainant.

WITH LIST OF WITNESSES AND EXHIBITS.

INDEX OF WITNESSES AND EXHIBITS IN VOLUME 7.

(For complete index see end of last volume.)

Witnesses.	Original.	Print.
Fred F. Connor	4762	2899
H. G. Toll	4847	2948
Robert G. Graham	4866	2961
H. W. Adams	4870	2963
H. E. Loose	4889	2975
Charles Clifford	4897	2890
C. R. Havens	4916	2993
A. L. Scott	4920	2995
J. H. Cooper	4932	3002
A. A. Watkins	4947	3011
C. M. Goodall	4950	3013
H. M. McCartney	4957	3018
A. D. Shepard	4992	3039
Stanley Dollar	5019	3055
A. C. Rulofson	5023	3057
J. P. Williams	5027	3060
E. H. Prentice	5031	3063
A. E. Gillespie	5045	3071
W. D. Sanborn	5050	3074
George Lang	5054	3076
R. G. Guyett	5060	3080
John McEwing	5066	3084
W. N. Rolph	5077	3090
C. R. Morse	5081	3093
Isidor Jacobs	5086	3096
C. F. Michaels	5089	3097
T. B. Settle	5093	3100
Frank J. Rumpf	5099	3103
Charles S. Moses	5105	3107
Thomas Denigan	5108	3109
M. S. Koshland	5112	3111
Julius Wolff	5119	3115
Abraham Rosenberg	5124	3118
H. R. Lipman	5128	3121
A. E. Fisk	5132	3123
J. G. Melvin	5136	3126
J. O. Bracken	5141	3129
W. S. Ray	5144	3130
E. H. Harriman	5147	3132
John W. Chapman	5161	3140
Charles O. Whittemore	5168	3145
J. Ross Clark (2)	5424	3277
T. E. Gibbon (2)	5433	3282
T. H. Rossbottom	5441	3287
Frank W. White (2)	5555	3352

EXHIBITS.

	Original.	Print.
Complainant's Exhibit 169	4788	2914
" " 170	5175	3149
" " 171	5206	3165
" " 172	5239	3181
" " 173	5298	3213
" " 174	5321	3225
" " 175A	5332	3230
" " 175B	5337	3232
" " 175C	5339	3233
" " 176	5348	3238
" " 177	5442	3288
" " 178	5446	3290
" " 179	5451	3293
" " 180	5483	3311
" " 181	5494	3316
" " 182	5503	3321
" " 182½	5539	3342
" " 183A	5556	3353
" " 183B	5557	3353
" " 184	5559	3354
" " 185	5560	3355
" " 186	5562	3356
" " 187	5565	3358
" " 188	5567	3359
" " 189	5571	3361
" " 190	5574	3363
" " 191	5576	3365
" " 192	5580	3368
" " 193	5582	3369
" " 194	5585	3370
" " 195	5587	3371
" " 196	5589	3372
" " 197	5591	3373
" " 198	5592	3373
" " 199	5594	3374
" " 200	5624	3391
" " 201	5634	3396
" " 202. (No such exhibit.)		
" " 203	5650	3404
" " 204	5672	3416
" " 205	5685	3422
" " 206	5705	3433
" " 207	5716	3439
" " 208	5759	3462
" " 209	5766	3466

STIPULATIONS.

As to testimony of R. P. Schwerin's testimony	5646	3402
" " contracts between Union Pacific and Newport News Shipbuilding & Dry Dock Co	5647	3403
" " Alex. Millar's testimony	5648	3403
" " Wm. Mahl's testimony	5648	3403
" " R. S. Lovett	5649	3403
" " Map of transcontinental lines	5649	3404
" " Empire Construction Co. and California Improvement Co	5649	3404
" " Manderfield letters	5766	3466
" " Frank W. White's testimony with reference to Complainant's Exhibit 209	5766	3466
" " J. C. Stubb's office expenses	5768	3466

UNITED STATES DISTRICT COURT ROOM,
SAN FRANCISCO, CAL.,
Monday, May 10, 1909—10.30 a. m.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance and Mr. G. E. Husted; on behalf of the defendants, Mr. R. S. Lovett and Mr. Peter F. Dunne.

FRED F. CONNOR,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Connor, where do you live?

A. Berkeley.

Q. And where is your business?

A. 1148 Harrison Street in San Francisco.

Q. Were you ever in the railroad service?

A. Yes, sir.

Q. Will you state where, when, and in what capacities you served?

A. With the Chicago, Milwaukee & St. Paul at Winona, Minneapolis, and Dubuque, Iowa; after that with the Great Northern in San Francisco; for nearly two years again with the Chicago, Milwaukee & St. Paul; then with the O. R. & N., the same city; then with the Panama Railroad; and after that in the steamship business, with the Pacific Coast Steamship Company.

Q. When did you enter the service of the O. R. & N.?

4763 A. July, 1894.

Q. How long did you continue with them?

A. Till February, 1898.

Q. In what capacity?

A. General agent.

Q. At San Francisco?

A. Yes, sir.

Q. With what company were you connected after that?

A. The Panama Railroad.

Q. For how long?

A. About six years.

Q. Previous to your service with the O. R. & N. in San Francisco, what was your relation to the Milwaukee here? You said you were connected with the Milwaukee & St. Paul here.

A. I was at first traveling freight and passenger agent in Nevada and California, and for the last two or three months, prior to leaving them, in the city ticket office, San Francisco.

Q. How long were you with the Great Northern in San Francisco?

A. Lacking two months of three years.

Q. Those two engagements with the Milwaukee road and the Great Northern immediately preceded your going with the O. R. & N.?

A. Yes, sir.

Q. What was your position with the Panama Railroad?

A. Pacific Coast agent.

Q. And after you left the Panama Railroad you went with the Pacific Steamship Company, did you?

A. Yes, sir.

Q. In what capacity?

A. Freight traffic manager.

Q. And still had your headquarters here?

A. Yes, sir.

Q. When did you quit the service of the Pacific Coast Steamship Company?

A. The first of September, 1907.

4764 Q. Do you recall, while you were representing the O. R. & N. here, a certain rate-war which occurred between the O. R. & N. boat-line and other boat-lines and the Shasta Route, between here and Portland?

A. Yes, sir.

Q. When did that begin and how did it begin and how did it terminate? What rates were in force while it was going on?

A. At the time I entered the service of the O. R. & N., in the latter part of July, 1894, the competition on the ocean was in the nature of steam schooners going north after lumber cargoes, that cut our north-bound rates from here to Astoria and Portland. To meet those, I made special rates at times to take traffic which we would otherwise lose, until that cutting, which was rather indiscriminate and irregular, became quite extensive, and finally it was decided by the traffic manager at Portland that a flat rate ought to be established, and it was then authorized from Portland, and was established, I believe, first at a dollar and a half and afterwards at $1.00, a ton, weight or measurement. That continued for quite a while; I don't remember how long, but something over a year. Mr. McNeil was receiver of the company, and on visiting San Francisco he investigated the conditions and found that the steam schooners were really in need of a north-bound cargo on account of the weather conditions and that the kind of fighting we were doing was unnecessary, that they had to have the cargo anyhow, and the matter of rates cut very little figure. An understanding was reached by which they would take some north-bound cargo on account of ballast, to keep the steamer down by the head.

4765 Q. What was the position of the railroad, the Shasta Route, in this controversy?

Mr. LOVETT. Had he finished his statement?

Mr. SEVERANCE. Oh, I beg pardon.

WITNESS. Well, that understanding (as I call it) reached at that time, provided for the re-establishment of regular rates on the ocean line, and in the meantime the Southern Pacific Shasta Route had

reduced its rates. I think the scale at that time was $1.30 first-class, and they had never taken any particularly active part in the traffic between San Francisco and Portland, and they made a level rate of 12½ cents per hundred pounds, all classes, with two commodity rates of 7½ cents; I think that was on sugar and salt.

Q. 7½ cents a hundred?

A. Yes, sir.

Q. That would be $1.50 a ton?

A. $1.50 a ton.

Q. And your rate was $1 a ton.

A. When the steamer line had reached a point where they were ready to advance their rate or re-establish the old rate, or as near to it as they thought advisable, they notified the Southern Pacific, so I understand. I did not make the notice myself. It is my understanding they notified the Southern Pacific of their intention, and the Southern Pacific declined to advance its rate at that time because of some difficulty or unsettled differences between the Southern Pacific Railroad and the O. R. & N. river lines on the Willamette River, particularly to or from the Willamette Valley and Portland. The negotiations between the Southern Pacific and the O. R. & N. I know nothing about, which led up to a point where the Southern Pacific was willing to advance its rail rate between San Fran-
4766 cisco and Portland, but it was finally accomplished and the steamship rate was advanced to 45 cents scale of rates. Prior to the cut, however, it had been 75 cents. At that time the railroad rate was advanced, I think, to 51 cents first-class scale on less carloads, maintaining a differential between the rail and ocean line of 6 cents on less than carloads and 3 cents per hundred on carloads.

Mr. Lovett. Those figures are per hundred, of course?

Witness. Per hundred pounds.

Q. And did that differential continue as long as you were connected with the O. R. & N.?

A. I think that differential was in effect when I left the company.

Q. How did traffic move between here and Portland during that war? Did it move entirely steamship, or entirely rail, or both boat and rail?

A. We carried about as much traffic as usual during the rate-war, and so far as I know the proportion of the business to the water lines competitive with the rail line was as much as it had ever been. My recollection is that the railroads got very little freight during that time or during any time prior to this rate-war.

Q. How was it after that, after the settlement, after the differential was established?

A. I could not say; I do not know.

Q. You don't know how it was divided?

A. The only way I had of knowing at the time was the information my solicitors gave me as to the quantity of freight going to the Southern Pacific freight-sheds, by watching the marks and ways of hauling and one thing or another. We had no records except
4767 what we could pick up in that manner.

Q. Were the Southern Pacific soliciting that freight?

A. That I don't know.

Mr. LOVETT. I didn't catch the last question.

Mr. SEVERANCE. He said the only way they had to find out how much was going to the Southern Pacific was through the solicitors, who watched the marks.

Mr. LOVETT. Did he state what they reported?

Q. Judge Lovett asks whether you stated what report you received from your solicitors about the way freight moving to Portland by the Shasta Route.

A. They would report occasionally a carload of wine assembling in the Southern Pacific freight-sheds, or a cargo of canned-goods.

Q. For Portland?

A. For Portland.

Q. Now, you said that there were certain unsettled conditions in the Willamette Valley growing out of the boat line of the O. R. & N. Will you explain what you mean by that, Mr. Connor?

Mr. LOVETT. Didn't he say he didn't know anything about the Willamette boat line?

Mr. SEVERANCE. No; he said that he didn't take part in the negotiations, that there were unsettled matters relating to the boat line.

Mr. LOVETT. I don't know as he can tell. I understood him to say he knew nothing about the Willamette boat-line.

WITNESS. I didn't know anything about the negotiations. I will say that all I did know was, that there was competition existing
4768 between the O. R. & N. boat lines and the Southern Pacific rail-lines in the Willamette Valley on traffic to and from the Willamette Valley and Portland and some through to San Francisco, that is, where we had freight from here via Portland and the boat-lines, in competition with the direct rail line to the same point. The trouble that I spoke of related to the local traffic in competition in the valley, which had been going on for quite a long time. The Southern Pacific, I believe, sought to reach an agreement with this O. R. & N. There being differences between them, the time to raise the rate on the ocean line between here and Portland having arrived, the Southern Pacific wouldn't come in and raise their rail rates so we could raise our ocean rates until they had reached an agreement in the Willamette Valley. How they reached that agreement I don't know.

Q. What was the traffic, if any, that moved to San Francisco from the Willamette Valley by the boat lines?

A. What was the first of that question?

Q. What was the traffic moving to San Francisco, if any, from the Willamette Valley, that was taken down by the O. R. & N. boat-lines and then brought here by boat?

A. Grain and potatoes.

Q. Did you have any personal knowledge of the movement of hops and apples and lumber out of the Willamette Valley, by your line, to points in the east?

A. To points in the east?
Q. Yes.
A. That didn't go on the ocean line?
Q. Yes.
A. That moved out by Portland and rail?
Q. Yes.
A. I have no knowledge of that.
Q. That was handled in Portland?
4769 A. That was handled in Portland. I have only a general knowledge of such conditions prevailing, but I know nothing about details.
Q. What was the situation as between the O. R. & N. and the Southern Pacific out of San Francisco on traffic destined to Montana points during the time you were connected with the O. R. & N.?
A. We carried traffic from San Francisco to Montana points in connection with our northern rail connections, with which we had through rates and divisions—the Northern Pacific, the Great Northern, and, for some Montana points, the Oregon Short Line.
Q. How did that move out of San Francisco?
A. Boat-line; that is, the traffic we carried moved out of here by boat line.
Q. That is what I am speaking of. And where did it leave the boat—at Portland or Kalama?
A. At Portland.
Q. And how did it move from Portland, suppose it was going on to Montana over the Great Northern?
A. We carried it to Spokane and transferred it to the Great Northern at that point, and when the Great Northern carried with us we delivered at Wallula Junction; when the Oregon Short Line carried it in connection with us, we delivered it to them at Huntington.
Q. Did the Southern Pacific Company participate in traffic to those points out of San Francisco?
A. It had a line via Ogden in connection with the Utah & Northern, and what amount of business they got that way I don't
4770 know, but I presume they got their share because occasionally, now and then, we learned about a car going that way. Of course I tried to get any we could.
Q. What was the class of business that moved to Montana points from San Francisco by these various points?
A. Nearly all the California products, like wine, dried fruit, sugar, canned goods.
Q. Did the boat and rail lines have any differential on that traffic?
A. Not on interior rail business.
Q. Then, the rates were the same if they moved over the boat line to Portland and then by rail to Montana as if they moved by the Southern Pacific from here to Ogden and thence to Montana?
A. Yes, sir.
Q. Did any of that Montana traffic secured by the Southern Pacific go by Portland and thence by the Northern Pacific, do you know?

A. I have no way of knowing that. It would be a circuitous route for them to carry it that way, and presumably they would not carry it that way. I don't know anything about that.

Q. How was the passenger business between here and Portland as between the O. R. & N. boat line and the Shasta Route?

A. We carried a very heavy business on our steamers during the pleasant weather, the so-called better season for the ocean travel.

Q. Did you make any efforts to get that business?

A. Yes, sir.

Q. How frequently did your steamers run when you were connected with the O. R. & N.?

A. If I recollect, when I first joined the company we were
4771 running a three-days' service; we had three steamers on the route, but only for a short time, until it was changed to five days apart, one steamer having been withdrawn. When two steamers were operating, each vessel made a round-trip in ten days, so we had a sailing from here every five days.

Q. Was the Southern Pacific running a passenger train between here and Portland for that traffic too?

A. Yes, sir. At that time I think they only had one train a day, the evening train No. 15 and 16.

Q. When did they put on the second train, if you remember?

A. I don't remember that. The morning train used to run as far as Redding. They afterwards ran that train through, but when they started to run through I don't remember.

Q. During the time of this war in freight traffic, what happened to the passenger rates between here and Portland by boat and rail?

A. I don't recollect clearly whether the passenger rate was cut to $5 at the same time the freight rate was cut to $1 or not; I am not sure. But at or about that time the passenger rates were cut, so that we had a first-class rate of $5 and a second-class rate of $2.50.

Q. Do you remember when, if at all, the passenger rate by the Shasta Route was cut?

A. At the same time, but I don't remember the dates.

Q. Do you remember to what figure they cut their passenger rate? If you don't recollect, it doesn't make any difference; it is already proved.

A. No, I don't recall it; it would be guess-work on my part. I remember the rate as it was cut was under the rebate system.
4772 A man would pay a regular fare, and on arrival at Portland would cash his rebate coupon, making the net rate less than the regular rate, which would prevent the scalping of the ticket or the use of it to intermediate points. The passenger had to go to Portland to get the benefit of the cut-rate.

Q. Did your boats stop at any intermediate points?

A. Astoria was the first stop.

Q. No point this side of Astoria?

A. Astoria and Portland only.

Q. Did your cut rates apply to Astoria or only to Portland?

A. Both.

Q. The same rate?
A. Yes, sir.
Q. Flat rate?
A. Yes, sir.
Q. You say the Southern Pacific cut-rate on passengers applied only on through business to Portland—not to interior points?
A. That is the only thing I know about. I don't know of any other application.
Q. Now, that rebate check which you speak of, I assume in this case is not used in the offensive way in which rebates are sometimes spoken of. That was a published affair?
A. It was the understanding with the passenger that he had to go to Portland to get his drawback or rebate or the difference between the full fare and the cut-rate fare.
Q. What I wanted to get at was: there was nothing secret about the Southern Pacific doing this?
A. Not at all, no, sir.
Q. They publicly advertised they would carry passengers on those terms.
4773 A. It was merely a method of protecting the intermediate business.
Q. Now, on business destined to Montana points, was the solicitation of that business active on the part of all the lines? I mean freight business.
A. Why, I should say it was, generally speaking, yes.
Q. That was on equality of rates?
A. Rates were equal. The ocean line had to assume the marine risk on the ocean.
Q. At the time these cut-rates, or reduced rates, I will call them, were in force, after this war, between here and Portland, do you know whether any business moved from interior points to San Francisco destined to Portland or from Portland destined to San Francisco, paying a local rail rate and then going by boat?
A. I don't remember.
Q. You understand my question, don't you?
A. I understand that you want to know if any interior business, interior to San Francisco or interior to Portland, was attracted to the ocean line on account of the cut rate?
Q. Yes, by paying the local rate into Portland or into San Francisco and then moving by boat.
A. A good many of the commodities moving from San Francisco, so-called California products that are not produced in San Francisco, would be obliged to come in here by rail lines or by Sacramento River water lines, boat lines, to get our steamship connection. But I can't say that on account of the war, so-called, this traffic moved from the interior in greater volume than it did before. When rates were stable it was true that some freight came to San Francisco from interior points to move by water, because it was assembled here to make combination cars.

4774 Q. Was the differential that was established between the two lines sufficient in amount to pay the local in from some of these interior points and make the rates equal with the main line, or not?

A. We didn't think it was at the time.

Q. You didn't think it was?

A. No, sir.

Q. Do you remember the Southern Pacific tariff that was published at the time this commodity rate of 7½ cents on salt and sugar and a flat rate of 12½ cents was put in? Did you see it?

A. Yes, sir.

Q. Was there any notation on that tariff as to the reason for putting it in?

A. Yes, sir.

Q. What was it?

A. It read something like this——

Mr. LOVETT. I think the tariff itself is the best evidence. The defendants object to that.

Mr. SEVERANCE. To save time, I will ask you to produce that tariff. I presume they were all burned up at the time you had the fire here, but if you can produce it the testimony will be stricken out and the tariff put in.

Mr. LOVETT. Go ahead. My objection stands, however.

A. "The rates herein named are not considered reasonable or fair, but are forced by unreasonable competition on the ocean, and will apply between or to and from the points named only, and not to or from intermediate points." Some such clause as that—to call the attention of the public to the reasons why the rates were put in, and that they were not considered just or fair, but were forced by water competition.

Q. When you were with the Pacific Coast Steamship Company, did any traffic move to San Francisco by that line which
4775 originated in the east?

A. Move to San Francisco?

Q. Yes, that originated in the east—so-called tran-continental business.

A. Yes, sir.

Q. Over what lines?

A. The three northern lines, with which the Pacific Coast Steamship Company co-operated on transcontinental business, namely, the Canadian Pacific, the Great Northern, and the Northern Pacific.

Q. How did that business move—at an equality of rates or on a differential?

A. Equal rates.

Q. What class of business moved that way?

A. General merchandise from far east, Missouri River points and east, and flour and grain from the western points on those lines.

Q. Do you recall the time that the Canadian Pacific had a differential on San Francisco?

A. Yes, sir.

Q. Was there much transcontinental traffic moved by the Canadian Pacific to San Francisco at that time?

A. At that time I was not connected with the lines carrying that traffic, and I didn't know what volume it was.

Q. You were with the O. R. & N. then?

A. Yes, sir, and the Great Northern.

Q. You stated that you were for several years with the Panama Railroad Company. Did that company form a part of a transcontinental line or of a line between the Atlantic Ocean and San Francisco?

A. Yes, sir.

Q. In connection with what company?

A. The Pacific Mail Steamship Company and the Panama Railroad Steamship line, so-called, on the Atlantic.

4776 Q. When you first went with the Panama Railroad, did the Pacific Mail have boats on both sides of the Isthmus, or only one?

A. Only on this side.

Q. How did the traffic that was carried by that route reach the isthmus from New York?

A. On the Panama Railroad steamers. The line was called the Panama Railroad Steamship line.

Q. And then moved across the isthmus by rail, and on this side brought up by the Pacific Mail?

A. By the Pacific Mail.

Q. Under what kind of an arrangement was that business worked, do you know?

A. Arrangement as to what?

Q. Well, as to manner of handling the traffic, the division of revenue and the rates.

A. There was a traffic agreement between the two companies in which there was set forth that the Panama Railroad Company would have the prerogative of making the east-bound rates.

Mr. Lovett. We object to that question and answer because it appears there was a contract which, I presume, was in writing, and I think that is the best evidence.

Mr. Severance. Very well; I have a copy of it here.

Q. Do you remember whether that contract was in writing at the time you went with the Panama road?

A. Was in writing?

Q. Yes.

A. Yes, sir.

Q. It was?

A. Yes, sir.

Q. The reason I ask you is because I understood from Mr. Schwerin it was not.

A. It was my text-book for quite a while.

4777 Q. Was there more than one of these contracts?

A. This contract, I think, was dated December, 1895.

Q. It expired when?

A. It expired December 18, 1900.

Q. Do you know of a later contract, made on the 11th of June, 1902?

A. I never saw it.

Q. You never saw that contract?

A. I heard about it only.

Q. What was the date of the original contract of which you speak?

A. December 18, 1895—a five-year contract.

Q. And that was made between the Panama Railroad Company and the Pacific Coast Steamship Company?

A. Yes, sir.

Q. And how long did it run—five years?

A. Five years.

Q. During the time that that contract was in force, how were the rates adjusted as compared with the all-rail rates?

A. We had a scale of class rates which was $1.80 first-class, and was 40 percent less than the all-rail rate on the same kind of traffic. We also had a few commodity rates, special rates, specific rates on certain commodities, and all other commodity rates were the transcontinental rates less 20 percent on carloads and 30 percent on less carloads.

Q. How was that revenue divided between your company and the Pacific Mail?

A. The Pacific Mail received 45 percent of the through rate accruing between San Francisco and New York, the Panama Railroad the balance.

Q. How were rates maintained over that line? Were they adhered to or cut?

A. There was very little cutting, and then only to secure enough traffic to give the ships sufficient business, sufficient cargo. If
4778 running a little light out of New York, our people would make some slight reductions to attract a little more business. East-bound, the Pacific Mail had the prerogative of making the rates, and no cuts were made from here east unless the same condition prevailed—that they were shy of cargo.

Q. What kind of cargo was transported from the east to San Francisco by the Pacific Mail and the Panama road during that time?

A. West-bound?

Q. Yes.

A. Nearly all kinds: general merchandise, iron perhaps being the heaviest—iron and oil: paper, groceries, canned-goods, hardware, books: we handled very little millinery and boots and shoes. We handled a great many pianos.

Q. What kind of traffic moved east-bound?

A. California products: the principal ones were wine and canned-goods.

Q. What did you say your position was here with the Panama Railroad?

A. Pacific coast agent.

Q. And what were your duties in that connection? What did you have to do, if anything, with soliciting traffic?

A. Well, anything that was to the interest of the company was in my line of duty—whatever I saw to increase or advance the interests of my company it was my duty to do. I had a territory reaching to the north as far as Vancouver and to the south as far as Valparaiso, and in addition to the so-called domestic traffic I looked after the Central American and Mexican business and business across the Isthmus. Once a year I used to go down to those countries and make coffee contracts and other contracts, to secure the bulky freight
4779 originating at these points and to secure the traffic coming from Europe to those west-coast points.

Q. What was the attitude of the Pacific Mail Steamship Company in reference to securing traffic for this route?

A. It was fair.

Q. Did they have soliciting agents out?

A. They had a solicitor at the time I went with the company, but he was in ill-health, and it so happened that their steamers from here were full with cargo offering which he booked to the extent that it was not necessary for him to go on the street and solicit more business, because if he did he would have more than he could carry; so he didn't go. It was natural that our company should want as much traffic out of San Francisco by their steamers as they could get destined to a point reached by their line. The Pacific Mail steamers from here carried freight destined to local points reached only by their line, out of which they got a better revenue. They had a steamer every ten days, and we worked very harmoniously—individually I did with the Pacific Mail people, in order that I might get as much space on those steamers as I could, which space of course would be for the benefit of our company. It would go through and contribute revenue to our rail and steamer lines. When the Pacific Mail were getting more local traffic than usual, I had to be active to get that business for the interests of the Panama Railroad. But, as I said, their attitude toward us was fair because we harmonized and got along all right.

Q. How many stops did the Pacific Mail boat make between
4780 here and Panama?

A. I think it averaged about ten or eleven stops. Their schedule was made so that a steamer leaving on the 8th of the month would make certain stops, ten or eleven; the steamer leaving on the 18th would make certain other stops, aggregating about the same number, and also the steamer leaving on the 28th. So that some of the minor ports to the south were served only about once or twice a month, while some of the larger ports were served by every steamer.

Q. Those were Central American ports?

A. Yes, ports like Acapulco, Guadeloupe, and Mazatlan had one steamer.

Q. Did the Pacific Mail boat make any other stop than San Francisco?

A. No, sir; the first stop was Mazatlan, Mexico.

Q. Now, you say you had some trouble in getting space. What was the reason? Didn't they have boats enough to handle the business offering, or what?

A. At times Central American ports take quite a little traffic from here in flour and that fills up pretty fast, because the consumption is pretty large, and the shippers of flour, sometimes of lumber, would anticipate quite a way and would get refusal of certain space. To offset that I was obliged to go after the wine shippers and get their orders in as far ahead as I could, to see that they were not shut out three or four days before sailing. The wine moved from here in about two seasons, for about two months moving freely. At other times they waited for orders from New York to ship. So, when I found that necessary I merely kept in touch with my shippers,
4781 so that I could take care of all the business they had to go, without having them shut out by the ingeniousness of flour shippers to Central American points.

Q. What was the character of the ships of the Pacific Mail? Were they fine, up-to-date boats, or old-fashioned?

A. They had freight and passenger accommodation.

Q. Were they new ships or old ships?

A. I don't know how old they were. They have been there quite a while.

Q. Are the same ones still running that were running in your day?

A. I believe they are, except those which have been wrecked. Several of them have been wrecked.

Q. Do you know how old they were in your day?

A. Oh, I presume 15 and 20 years old. I presume there were some a little older. They were considered good ships, good carriers, but were expensive to operate, expensive to load and unload.

Q. Have they put on any new ones so far as you know?

A. I believe they have bought some boats, but they have not bought any new ones, as far as I know. They have replaced vessels that have been wrecked, by other boats that they have bought.

Q. As I understand you, then, the Pacific Mail Company, owing to the ill-health of its agent, did not solicit this trans-continental business after you went with the Panama Railroad; is that right?

A. I don't want it stated that the reason they didn't solicit was because of his ill-health, but that was one of the reasons perhaps; and the other one was they didn't need to because their ships
4782 were always full out of here. I say always; I mean unless some accident or something would occur so that a shipper of a large quantity of freight would not be able to make connection, get his freight ready for that ship, by some slip or other.

Q. What percentage of their cargo was transcontinental business, as a rule?

A. On my going with the company I think they averaged out of here, of New York cargo, every ten days, about 250 to 275 tons—of New York freight.

Q. How would it be coming this way?

A. And 6 or 7 hundred tons west-bound, and in a couple or three years I had got it up to 800 and 900 tons east-bound per trip and from 1,200 to 2,000 tons west-bound. It would accumulate on the Isthmus and be carried forward from there as their ships were able to carry it, at the same time reserving space from Panama to take care of local freight to come from intermediate points which had been reserved by the agents along the line, along the intermediate points of the west coast. Sometimes we would have a ship out of Panama that would be full of New York freight to San Francisco destination.

Q. Did you experience many delays in the transit of commodities by this difficulty at the Isthmus in getting space?

A. There were times, when freight was moving freely, that we got ahead of the Pacific Mail, because on the Atlantic we endeavored to put as much service at the use of the shippers as they could use, and we increased our service from once every ten days to once a week; used to sail every Tuesday.

4783 Q. That is, on the Atlantic side?

A. On the Atlantic, from New York. That Tuesday sailings from New York resulted in a congestion at the Isthmus because the Pacific Mail did not increase its service on this side at the same time, accordingly. Then, that freight on arrival at the Isthmus would have to go into the warehouse in order to utilize the cars that they had on the Isthmus, to transport the stuff across. That which went out of the warehouse was oftentimes delayed. That is one of the things I fought against, so as to keep the service regular here, rather than bad at one time and good at another time. And the tendency of the Panama Railroad was to put on more steamers, and my efforts with the Pacific Mail tended to induce them to put on more vessels or put on larger vessels. They finally did, under the second contract that I said a little while ago I knew nothing about—I mean the details of it.

Q. That is the contract of 1902?

A. Yes, sir; I presume so.

Q. Now, you say this first contract expired in 1900. How was the Panama route made up between the date of the expiration of that contract and the making of the contract of 1902?

A. I chartered vessels this side and operated them between San Francisco and Panama direct.

Mr. LOVETT. Who did that?

WITNESS. The Panama Railroad.

Q. You did that yourself?

A. Yes, sir.

Q. What kind of service did you have then? How frequent was it?

4784 A. We had a sailing from here about every three weeks, but we had two vessels part of the time that were of unequal capacity and speed and that threw them together occasionally; and then when the sailings got too far apart I would charter an extra vessel to fit in between, to take care of the business. We carried a

lot of barley and asphaltum at that time. I was able once in a while to load a vessel full of that and send it down. We had those on about a year and a half; the first charter, of the "St. Paul" for three round-trips, then the "Roanoke" for three round-trips, and I got the "Argyle" for a year, and got the "Leelanaw" for a year. Then we had extra vessels, like the "Charles D. Lane," the "Hyades," the "Pleiades," and the "Enterprise"—outside vessels that we hired just for one voyage, to take away the extra traffic that was offered. We carried pretty large quantities of wool at that time, which, prior to that, had never been carried in any quantity to speak of; rags and dried hides—bulky freight, which was not desirable for a small boat like the Pacific Mail boat to handle; light but very bulky. But in our so-called big ships, like the "Argyle," or the "Pleiades," or the "Hyades," that will carry 4,500 tons, it is very desirable to take that class of traffic, and so I went after it. And I will say that that kind of traffic can be handled only to advantage with big carriers. You are allowed to store your wine about six tiers deep. Deeper than that the lower tiers will crush. When you have got that in sixteen feet, the only stuff you can put on top is the light bulky stuff. The Pacific Mail could never carry that on
4785 their vessels because there wasn't room for it, and it was necessary to make it extra stowage. So, during that time we carried a great deal of that light, bulky stuff, which was not an item in the through traffic prior to that time.

Q. When the Pacific Mail service was re-established did they use the same boats they used before—substantially the same ones?

A. They did, and they improved their service by increasing the number of sailings. They adopted a weekly sailing, at our solicitation—my own solicitation, I will say—for the reason that it coincided with our service on the Atlantic. Being a weekly service over there, the freight would make better connection and come through in better shape, without the lay-overs, and consequently the merchants could depend upon the regularity of the service when we had a weekly service here as well as on the Atlantic, and we could get a better rate on business. In other words, you didn't have to cut your rate to make up the differential in service.

Q. Did that weekly service continue as long as you were with the Panama?

A. The weekly service was on, yes, sir, as long as I was there.

Q. Do you know what it has been since, or don't you know about that?

A. I have heard that it is ten days. I am not so sure just how long that has been in effect. I think it is ten days now.

Q. After the second contract was made, how were the rates adjusted? You say you didn't have to make a low rate.

A. We didn't make any change, as I recall, except to abolish some of the commodity rates that I had made on such articles as wool
4786 and dry hides. I had made some very low rates to attract that bulky stuff, to enable me to load the big ships. When the Pacific Mail went on and we operated under the second contract, that

was no longer desirable. Hops, for instance, are very bulky, very light stowage, and we abolished the rates in effect at that time, for that purpose.

Q. You abolished them because of the small size of the Pacific Mail boats?

A. Their vessels being passenger and the vessels we ran being freight vessels. I will say that when I ran the "Roanoke" and "St. Paul," which were passenger as well as freight vessels, I did not make these low rates on those light commodities to attract those commodities, but when I got the "Argyle" and the "Leelanaw" then I made the low rates to attract the bulky stuff, and for the same reason abolished those rates when the Pacific Mail second contract became effective, their boats being more like the "St. Paul" and the "Roanoke," passenger boats, with shallow decks, that could not accommodate that stuff, and it was not desirable at the rates we made.

Q. What was the carrying capacity of the Pacific Mail boats? What was their tonnage?

A. From two to three thousand tons by weight.

Q. And you say you got your business from New York at one time up to where you carried two thousand pounds west-bound?

A. We have filled some of the vessels, like the "San Juan," from Panama here, with New York freight only.

Q. Aside from taking out these commodity rates that you speak of on bulky articles that they could not carry with their boats,
4787 what other changes were made, if any, in the schedule as compared with what it had been when you were operating with them before?

A. The prerogative reverted to the Pacific Mail to make east-bound rates. Mr. Center was the general agent of the company, and in his hands lay the making of the east-bound rates; and it is my recollection that he established the same rates that were in effect prior to the termination of the old contract—the 5-year contract—and that from time to time I induced him to make some reductions to take care of traffic that I had been handling from time to time, that I considered very desirable, such as pig lead, and had in a measure committed myself for, and through his courtesy in the matter I was able to continue some of those rates. I mentioned pig lead as one of them; there are two or three others which I don't remember. But this, you will understand, is to show there was harmony between us in that; that if I wanted a certain rate east-bound I could get it. Mr. Center would agree to put it in, which he did, although the prerogative was entirely with his company. There was a minimum agreed to, that the cut should not leave less than $8 a ton to divide between the two companies.

Q. You say you never saw this contract of 1902?

A. No, sir.

Q. What was that $8 a ton? That would be 40 cents a hundred, wouldn't it?

A. Yes, sir.

Q. That is what this provides.

Mr. LOVETT. Is that the last contract?

Mr. SEVERANCE. Yes.

Mr. LOVETT. Hadn't you better put it in?

4788 Mr. SEVERANCE. Yes, I will be glad to put it in.

Q. Mr. Connor, do you recall the time, previous to 1893, when an arrangement was in force by which the transcontinental lines rented certain space in the Pacific Mail boats for transcontinental business?

A. Yes, sir.

Q. How much space did they rent?

A. I don't know the details.

Q. You don't know the amount of space they rented?

A. No, sir.

Q. What company were you with at that time?

A. The Chicago, Milwaukee & St. Paul.

Mr. LOVETT. What time was that?

Mr. SEVERANCE. Previous to 1893.

Q. At that time did the Pacific Mail operate on one side or both sides of the Isthmus?

A. I believe it was both sides. I think they had Newport, Colon, and Acapulco on the Atlantic.

Mr. SEVERANCE. In connection with this examination I offer in evidence a copy of the contract between the Panama Railroad Company and the Pacific Mail Steamship Company, dated June 11, 1902 (omitting the acknowledgments).

A copy of the contract referred to was marked Complainant's Exhibit 169, and is as follows:

COMPLAINANT'S EXHIBIT 169. (Connor.)

THE PANAMA ROUTE.

CONTRACT BETWEEN THE PANAMA RAIL ROAD COMPANY AND THE PACIFIC MAIL STEAMSHIP COMPANY, DATED JUNE 11, 1902.

This agreement, made this eleventh day of June, 1902, in the

4789 year one thousand nine hundred and two, between the Panama Rail Road Company, duly chartered and organized under the laws of the State of New York, and hereinafter called the Railroad Company, party of the first part, and the Pacific Mail Steamship Company, also duly chartered and organized under the laws of said State, and hereinafter called the Steamship Company, party of the second part, witnesseth:

Whereas, the said Railroad Company is now operating its railroad across the Isthmus of Panama, and running a line of steamers from New York to Colon on the Atlantic Ocean; and

Whereas, the said Steamship Company is now running a regular line of steamers on the Pacific Ocean between San Francisco and

Panama and intermediate ports on the Central American and Mexican coast; and

Whereas, both Companies are interested in and desirous of hereby establishing conditions under which they may carry on regularly and without interruption the business of transportation between San Francisco and New York and the said intermediate ports, with the intent hereby declared by both parties to develop to the fullest possible extent traffic by the Isthmus of Panama and to prevent the diversion of the business of said Isthmus to other routes,

Now, therefore, in consideration of these premises and with the intention of so securing to both of the parties hereto the advantages of a contract of the general character above set forth for a term of years, and in consideration of the sum of one dollar by each of the parties hereto to the other paid before the delivery hereof, it is mutually covenanted and agreed by and between the respec-
4790 tive parties hereto, and their respective successors, assigns and legal representatives, as follows, that is to say:

Article I.

The Railroad Company hereby concedes to the Steamship Company (so far as its charter and its contract with the Colombian Government permit) the exclusive privilege of through billing to and from any and all ports of Central America, Mexico, the United States and British Columbia, on the Pacific Ocean, under and during the life of this contract as hereinafter provided, and in connection with the Railroad Company and each and every one of its Atlantic connecting lines.

During the pendency of this contract, the Steamship Company, when taking on its vessels for shipment at San Francisco or at any Pacific Coast port situated between San Francisco and Panama, merchandise destined to Atlantic or Gulf ports of the United States, or to European points shall issue its through bills on such merchandise only via the Isthmus of Panama.

At New York and San Francisco business transported or to be transported by the Panama Route is to be delivered to and received from connecting lines, the rates on such business so delivered to or received from connecting lines to be made by adding to the charges of such connecting lines and all transfer charges, the rates prescribed under this agreement for transportation between New York and San Francisco.

And both parties agree respectively (within the scope of their powers and as far as they can consistently with their
4791 own safety and protection and with their duties as common carriers) to co-operate with each other in making such rates and in generally taking such measures as will afford to both parties protection against interference or competition by other steamship lines with the traffic hereby conceded by each to the other.

ARTICLE II.

SECTION "A." There shall be maintained by the Steamship Company a through line of steamers each way between Panama and San Francisco, and such intermediate ports at which the Steamship Company now calls, as well as any other intermediate ports on the Pacific Coast as above recited whose traffic shall develop sufficiently to warrant making them ports of call; the Steamship Company shall, subject to the perils of the seas, make at least three trips each way per month between Panama and San Francisco, and the steamers shall be those now running on the Steamship Company's line between said ports, or others of approximately equal capacity and speed. In case any of the steamers engaged in the above service be lost or destroyed, the Steamship Company agrees to promptly replace such lost or disabled vessel or vessels by another or others of approximately equal capacity and speed, so far as necessary to maintain the service as above described, namely, a through line of steamers between Panama and San Francisco, and the intermediate ports as aforesaid, and the three trips each way per month as aforesaid by said present steamers or others of approximately equal capacity and speed.

4792 SECTION "B." The Railroad Company shall maintain a line of steamers each way between New York and Colon, and it shall, subject to the perils of the sea, make at least three trips each way per month between New York and Colon, and the steamers shall be those now running on the Railroad Company's line between said ports, or others of approximately equal capacity and speed. In case any of the steamers engaged in the above service be lost or destroyed, the Railroad Company agrees promptly to replace such lost or disabled vessel or vessels by another or others of approximately equal capacity and speed, so far as necessary to maintain the service as above prescribed, namely, a through line of steamers between New York and Colon as aforesaid, and the three trips each way per month as aforesaid by said present steamers or others of approximately equal capacity and speed.

SECTION "C." These two steamship lines, connecting respectively at Panama and Colon with the Panama Railroad shall constitute, with said railroad, what shall be hereafter called the "Panama Route," between New York and San Francisco.

ARTICLE III.

The intention and purpose of this agreement being to obtain for the said "Panama Route" all the freight business that can be secured at reasonable and remunerative rates, it is agreed that either party to this agreement shall, at the request of the other party thereto, publish and make operative such through rates between New York and San Francisco as will compete with those made operative

4793 by the competing transcontinental railroad lines; and failure to comply with such request within twenty days from the date

of its receipt shall constitute a violation of this contract, and subject the offending party to the provisions of Article XIX of this contract.

Both parties, however, agree that whenever either party without request from the other, puts in operation on east or west bound traffic between San Francisco and New York, or requests the other to put in operation on such traffic, a through rate of less than forty cents (40c) per hundred pounds, or ten cents (10c) per cubic foot, then the party so putting into effect such rate, without request from the other, or the party making such request, agrees to bear itself whatever difference there may be between the minimum rate above stated and the rate so put in operation, or requested, below such minimum rate.

ARTICLE IV.

During the term of this contract the Railroad Company shall not, directly or indirectly, run any steamers on the Pacific north of Panama, and shall (in so far as its charter and its contract with the Colombian Government may permit, and so far as it can consistently with its own safety and protection under existing treaty stipulations), in every manner lawfully and reasonably within its power, promote and protect the interests of the Steamship Company in all traffic north of Panama in connection with said Railroad and its Atlantic connecting lines, and especially against all forms of competition whatsoever, and will (so far as it is practicable) give, turn over to and direct to the vessels of the Steamship Company, to the extent that it can lawfully control or influence
4794 the same, all business destined to Pacific points north of Panama originating on the Isthmus of Panama and carried upon its Railroad or which may be brought to said Isthmus by its own ships or by other ships or lines, and especially will not, so long as the Steamship Company faithfully performs the stipulations of this Agreement, become interested in or divide with any other person or persons, or corporation or corporations, the earnings of a through line or any through business to or from points on the Pacific Coast north of Panama, and upon all such through business the full local tariff rates for the time being in force for transportation across the Isthmus of Panama shall be charged to all competing lines, and the Railroad Company will pay to the Steamship Company the amount of the share of the through rate to which the Steamship Company would have been entitled if such through business had been carried over its line.

Further, the parties hereto, each for itself, agree that all freight, passengers, baggage, specie and mail matter confided to either for transportation or brought by the one party to the other for the purpose of being conveyed in either direction over and upon the whole or any part of said Panama Route, shall be transported and carried promptly and without undue delay.

During the pendency of this contract the Steamship Company binds itself not to run vessels directly or indirectly from any port

on the eastern shore of the North American continent to Colon, or to the eastern terminal of any of the transcontinental routes.

4795 The Steamship Company agrees during the pendency of this contract (in so far as its charter may permit, and so far as it can consistently with its own safety and protection under existing treaty stipulations), in every manner lawfully and reasonably within its power to promote and protect the interests of the Railroad Company in the traffic of the Panama Route, and especially against all forms of competition whatsoever; the Steamship Company further agrees during the pendency of this contract not to divert from the Panama Route the traffic to or from any of the Pacific ports between San Francisco and Panama, originating at or destined to Atlantic or Gulf ports of the United States or European ports. And for such business the Steamship Company shall not enter into contracts of any kind involving through billing with any person, party or corporation other than the Panama Railroad Company, nor shall the Steamship Company compete directly or indirectly (by reduced rates or otherwise) with the "Panama Route" on said business, and on any business so diverted directly or indirectly by it the Steamship Company shall pay to the Railroad Company the freight it would have been entitled to receive if such business had been carried across the Isthmus on its railroad.

Article V.

It is agreed that through freight rates so far as the same accrue to the Railroad Company and Steamship Company shall be divided between them as follows:

On freight between United States, Atlantic Coast Ports and United States Pacific Coast Ports—

To the Railroad Company, fifty percent (50%).

To the Steamship Company, fifty percent (50%).

4796 Minimum rate, forty cents (40c) per hundred pounds or ten cents (10c) per cubic foot.

On freight between United States Atlantic Coast Ports, and Mexican or Central American Ports—

To the Railroad Company, sixty percent (60%).

To the Steamship Company, forty percent (40%).

Minimum rate to or from Mexican Ports, sixty cents (60c) per hundred pounds, or thirty cents (30c) per cubic foot ship's option.

Minimum rate to or from Central American Ports, fifty cents (50c) per hundred pounds, or twenty-five cents (25c) per cubic foot ship's option.

On foreign freight between European Ports and Mexican or Central American Ports—

To the Railroad Company, forty percent (40%).

To the Steamship Company, sixty percent (60%).

Minimum rate, thirty-five shillings (35 s.) per ton of twenty-two hundred and forty pounds (2,240), or forty (40) cubic feet).

On foreign freight between European Ports and United States Pacific Coast Ports—

To the Railroad Company, thirty-seven and one-half percent (37–1/2%).

To the Steamship Company, sixty-two and one-half percent (62–1/2%).

Minimum rate, forty cents (40c) per 100 pounds, or ten cents (10c) per cubic foot.

The above described divisions between the Railroad and Steamship Company shall apply to the portion of the through freight rates accruing to said companies on business and traffic whether originating at or destined to the ports above mentioned or points prior or subsequent thereto.

Subject to the above agreed minima, the freight rates between United States Atlantic and United States Pacific Coast
1797 Ports, and between United States Atlantic Coast Ports and Mexican or Central American Ports, and between Mexican, Central American or United States Pacific Coast Ports and European Ports, are to be fixed by the initial carriers. All tariffs naming rates and commodities are to be made by mutual consent and become effective with the date of this agreement.

It is further agreed that if, during the pendency of this contract, it becomes necessary, on account of quarantine or revolutions, or the acts of any government, to hold and warehouse freight, mail, specie, etc., at any point on the Railroad or Steamship Company's lines, all charges thereon are to be considered as line charges, and are to be prorated between the lines in interest according to the divisions of the through rates, it being understood that the charges for handling and warehousing by the Railroad or Steamship Company are to be at cost.

ARTICLE VI.

It is mutually agreed that the term "ton," as used in this agreement, shall mean two thousand, two hundred and forty (2,240) pounds avdrp., or forty cubic feet measurement when so taken by the ships, unless otherwise expressly provided herein.

ARTICLE VII.

Passenger rates accruing to the Railroad and Steamship Company between New York and Pacific Coast Ports, Panama to San Francisco, both included, shall be divided as follows:

To the Railroad Company, fifty percent (50%).

To the Steamship Company, fifty percent (50%).

1798 Through passenger rates effective under terms of this contract are those which were in effect December 1, 1899, and any change therefrom is to be made only by mutual consent in writing;

but either party to this contract is at liberty to diminish any agreed rate, but at its own cost, by the amount of the proportion accruing to it under the above divisions.

Any commissions paid agents for soliciting and obtaining passenger business covering service of Panama Route are to be divided between the Railroad Company and the Steamship Company pro rata according to the divisions of the through rate.

Both parties shall have the right to appoint and maintain Agents at any point they may select.

ARTICLE VIII.

The steamers of the Pacific Mail Steamship Company shall make use of the La Boca wharf provided by the Panama Railroad Company whenever in the judgment of the Pacific Mail Steamship Company it is safe and prudent so to do; but in the event of the steamers not being able to get alongside said wharf without delay, then the cargo, etc., shall be lightered in the Bay of Panama.

When steamers load or discharge alongside La Boca wharf no charge shall be made on passengers, mails, specie, baggage, etc., but the Railroad Company shall be paid as wharfage on all other cargo (when same is taken from or landed on the wharf direct) a maximum rate of eighty cents (80c) American gold per ton, it being understood that the Railroad Company is to provide at its wharf at La Boca the necessary equipment for the efficient operation
4799 thereof and for the prompt loading and unloading by the Steamship Company of its vessels, compensation for all which is included in above wharfage.

If the Railroad Company furnishes cranes, there shall be an additional charge of ten cents (10c) per ton on the cargo for the use of such cranes, such usage, however, of cranes being optional with the Steamship Company.

When lighterage is performed by the Railroad Company and the lighters are loaded or discharged at La Boca, no charge other than the lighterage charged is to be made the Steam-ship Company for the use of La Boca wharf or cranes, or loading or unloading the lighters at the wharf.

If the Steamship Company elects to enter service between Panama and Chiriqui, such service is to form part of this contract, and the Steamship Company is to have the right to land all cattle it may carry on the beach at Panama free of any charge.

ARTICLE IX.

The Railroad Company shall, during the pendency of this contract, continue to employ its lighters when reasonably necessary to connect with the Steamship Company's vessels and the shore at Panama, the Railroad Company agreeing to furnish lighters in sufficient number to load and unload such vessels with dispatch.

When lighters are used the following shall be the lighterage charges:

For each ton of freight delivered by the Steamship Company to the Railroad Company, or by the Railroad Company to the Steamship Company, ninety cents (90c) per ton, United States currency.

4800 For all specie or treasure, one-fortieth of one percent (1–40%).

For each passenger, one dollar ($1.00) United States currency.

No charge for extra baggage or mails.

Panama local cargo to be received and delivered by the party of the first part as agent for the party of the second part, in that City; the receipt or delivery thereof and transfer to and from steamer including the lighterage, wharfage and cranage, to be performed by party of the first part, and party of the second part will pay for such services rendered $1.25 per ton, whether lightered or received from or delivered to steamers at La Boca.

ARTICLE X.

The Railroad Company agrees to transport from Colon to Panama, supplies, excepting coal, exclusively for the use of the Steamship Company's steamers on the Pacific at three dollars ($3) per ton, and to lighter same at Panama at one dollar ($1) per ton additional, it being hereby agreed that the Steamship Company shall have the right to perform lighterage on its own coal and other supplies in its own lighters.

The Railroad Company agrees to transport by each steamer from New York to Colon, supplies exclusively for the use of the Steamship Company, at the rate of $5 per ton.

ARTICLE XI.

The officers and employees of the Steamship Company shall be carried between Panama and Colon free, and between New York

4801 and Panama or Colon at the rate of ten dollars ($10) for each passenger.

The officers and employees of the Railroad Company shall be carried between Panama and San Francisco at the rate of twenty dollars for each passenger.

ARTICLE XII.

The Railroad Company agrees so long as its wires are in working order, to obtain and furnish the Steamship Company all telegraphic and telephonic information through its Agents that may be necessary to properly conduct the business of the Panama Route.

ARTICLE XIII.

Each party hereto shall be responsible for cargo, specie and mail while under its care and until delivered to its co-carrier.

Any responsibility accruing in regard to passengers or their baggage is to be assumed in like manner as cargo.

Whenever any loss or injury occurs, or damage from delay in transportation, the loss or injury or damage from delay whether accruing with respect to cargo, specie, mail, passengers or their baggage, shall, when same cannot be located, be prorated between the Railroad Company and the Steamship Company according to the divisions of the through rate that may apply in each case.

In case any actions, suits or claims shall be brought against any co-carrier, the carrier responsible, as above stipulated, shall bear and discharge any loss, damage or expense incident thereto; pro-
4802 vided the carrier sued shall at once give notice to the other co-carrier to the end that each may have opportunity to defend its interests.

ARTICLE XIV.

The carriage or transportation of salt, coal and grain (except barley in bags between United States points) is hereby exempted from the operation of this contract, and each of the contracting parties reserves its full liberty as to the carriage or transportation of these articles.

ARTICLE XV.

The Railroad Company will do at its shops in Panama and Colon such work and repairs for the Steamship Company as the Steamship Company from time to time may request, and as the Railroad Company can perform without interference with its own business—charging therefor the cost of labor and material on the Isthmus, with ten per cent added thereto.

ARTICLE XVI.

The Steamship Company shall make over and deliver to the Railroad Company, charter-parties of even date with the present instrument, at the nominal rate of one dollar per month, and unconditional in terms of the following steamers belonging to said Company, and now running or to be run between Panama and San Francisco under this contract, to wit, the Acapulco, the San Jose, the City of Sydney, the Colon, the City of Para and the San Juan, and agrees to likewise make over and deliver to the Railroad Company like charters of any other steamers placed upon said service under the provisions of Section "A" of Article II of this contract, simultaneously
4803 with the placing of the same upon said service.

It is hereby further agreed that as long as the Steamship Company performs punctually and regularly three trips per month

in each direction under and according to the provisions of Section "A," Article II of this contract, then these charters are to remain unenforceable.

If the Steamship Company, from any cause except the act of God, or the public enemy, or arising from the perils of the sea, omits two sailings in any one calendar month during the continuance of this contract, then the above charters are, as to all or any one or more of said steamers, at the Railroad Company's option, to become enforceable, and the Railroad Company shall have, and is hereby given the absolute right and power to run said vessels, or any of them, on the aforesaid described route and service, calling at all ports between Panama and San Francisco, and vice versa, for the account and risk of, and at the expense of said Steamship Company, during the unexpired portion of this contract; it being the express intent and agreement of the parties hereto that the covenants of this article shall be specifically enforceable, and that breach thereof cannot be adequately compensated in damages.

The Steamship Company agrees, in the contingency aforesaid, peacefully to surrender to the Railroad Company, upon its demand in writing, the said steamers, or any of them, without the intervention of any court or legal proceedings of any kind whatsoever; the Steamship Company hereby irrevocably giving the Railroad Com-
4804 pany all the power and authority needful in the premises, in order that the Railroad Company may take possession of said steamers, or of any one or more of them, and operate them, or any one or more of them, under the provisions and terms of the charter-parties hereto annexed; and it is expressly agreed that in case of any conflict of opinion or doubt as to the respective rights of the parties hereto under this clause, until such rights are finally established by the judgment and decree of a competent court, or by arbitration in the manner hereinafter provided, the Steamship Company or its successors will not, in the contingency herein contemplated, hold said ships as against any demand of said Railroad Company, and will not prevent or hinder the use of the same by the Railroad Company in the manner or in the business contemplated by this Agreement.

Article XVII.

The Railroad Company shall make over and deliver to the Steamship Company, charter-parties of even date with the present instrument, at the nominal rate of one dollar per month and unconditional in terms, of the following steamers belonging to said Railroad Company and now running or to be run between New York and Colon under this contract, to wit, the Allianca, the Advance and the Finance, and agrees to likewise make over and deliver to the Steamship Company like charters of any other steamers placed upon said service under the provisions of Section "B," of Article II of this contract, simultaneously with the placing of the same upon said service.

It is hereby further agreed that as long as the Railroad Company's Steamship line performs punctually and regularly
4805 at least three trips per month in each direction, under and according to the provisions of Section "B," of Article II of this contract, then these charters are to remain unenforceable.

If the Railroad Company from any cause except the act of God, or the public enemy, or arising from the perils of the sea, omits two sailings in any one calendar month during the continuance of this contract, then the above charters are, as to all or any one or more of said steamers, at the Steamship Company's option to become enforceable, and the Steamship Company shall have and is hereby given the absolute right and power to run said vessels, or any of them, on the aforesaid described route and service, between New York and Colon and vice versa, for the account and risk of, and at the expense of said Railroad Company during the unexpired portion of this contract, it being the express intent and agreement of the parties hereto that the covenants of this article shall be specifically enforceable and that breach thereof cannot be adequately compensated in damages.

The Railroad Company agrees in the contingency aforesaid, peacefully to surrender to the Steamship Company, upon its demand in writing, the said steamers, or any of them, without the intervention of any court or legal proceedings of any kind whatsoever; the Railroad Company hereby irrevocably giving the Steamship Company all the power and authority needful in the premises, in order that the Steamship Company may take possession of said steamers, or of any one or more of them, and operate them, or any one or more of them, under the provisions and terms of the charter-parties hereto annexed;
4806 and it is expressly agreed that in case of any conflict of opinion or doubt as to the respective rights of the parties hereto under this clause, until such rights are finally established by the judgment and decree of a competent court, or by arbitration in the manner hereinafter provided, the Railroad Company or its successors, will not, in the contingency herein contemplated, hold said ships as against any demand of said Steamship Company, and will not prevent or hinder the use of the same by the Steamship Company in the manner or in the business contemplated by this Agreement.

Article XVIII.

For all joint business transacted under this contract and for all services or material furnished by the parties thereto to each other, there shall, except as herein otherwise expressly provided for, be rendered at New York a monthly account on the 25th day of each month for the business of the preceding month, such statement to cover all business of the preceding month cleared during said month, and the sums due shall be paid on that date to the creditor company.

Article XIX.

Any and all questions that shall or may arise touching this Agreement, or the construction thereof, or any matters or things to be done

or performed by either of the parties hereunder, shall be submitted to the decision and award of three arbitrators, who shall be disinterested persons, and who shall be chosen, one by each of the parties hereto, and the third by the two so chosen. Either party hereto may, at any time, notify the other, in writing, that it elects to sub-
4807 mit any such matter of difference to arbitration hereunder and name an arbitrator, and if the other party shall fail or omit to name an arbitrator within fifteen days after written notice of such selection of an arbitrator by the other party and written request to name an arbitrator, the arbitrator named by the party giving such notice shall name an arbitrator for and on behalf of the party so failing or omitting, who shall have the same power and authority as though he had been chosen and nominated by such party. And the decision and award of any two of such arbitrators with respect to the matters so submitted to them, shall be binding and conclusive upon the parties; and each of the parties hereto does bind itself and its successors, faithfully to abide by and carry out any award so made by any two of the arbitrators appointed as aforesaid. Any question of violation or failure to observe this Agreement by either party, or any other question arising between them hereunder, may be submitted to such arbitrators, and they shall determine first, as to the fact, and secondly as to the amount of money damages to be paid by the party found guilty, to the party making the charge, or the particular thing to be done or to be refrained from being done by such guilty party, and such amount shall be paid, and such award shall be complied with within ten days of the rendering of such award. The two parties both agree to furnish to the arbitrators any paper, instrument or book in their possession which said arbitrators may request them to produce. Should any arbitration fail for any cause, then such proceedings as above prescribed may be taken *de novo* by either
4808 party to this agreement. All hearings by said arbitrators shall be held in New York, or on the Isthmus of Panama, or in San Francisco, or such other place where witnesses necessary to appear before the arbitrators may be obtained with the least expense to the parties to this contract, and all fees and expenses of such arbitrators shall be borne by the party against whom the award of the arbitrators shall be made, and shall be assessed by said arbitrators and made part of their award.

This article shall be considered of the essence of this agreement and any breach of or failure to observe any of the terms thereof shall be deemed to be a material breach of the entire contract.

Article XX.

Any of the conditions of Articles V, VII, VIII, IX, X, and XI of this Agreement may be altered by consent in writing of the parties hereto, signed by their respective Presidents or Vice-Presidents, without affecting any of the other conditions of this Agreement.

ARTICLE XXI.

Subject to the provisions of a contemporaneous agreement between the parties hereto of even date herewith, this contract, except as herein otherwise expressly prescribed, shall remain in force for three years from the eleventh day of June, 1902, and for the further period of two years, if either party shall so elect, and if such party shall have given notice of such election to the other party hereto at least
ninety (90) days before the expiration of the first term of
4809 three years.

In witness whereof, the said parties hereto have caused this instrument to be signed in their corporate names by their respective Presidents, and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries, the day and year first herein above written.

PANAMA RAIL ROAD COMPANY,
By J. EDWARD SIMMONS, *President.*

Attest:
E. A. DRAKE, *Secretary.*

PACIFIC MAIL STEAMSHIP COMPANY,
By CHARLES H. TWEED, *President.*

Attest:
JOS. HELLEN, *Secretary.*

Q. Do you know of any time when certain San Francisco merchants put a line of ships on to run in connection with the Panama Railroad and the Panama Steamship Line?

A. That was about the time, in 1893, my recollection is, that the so-called Transcontinental Freight Association or Transcontinental Association discontinued: I think it was the 11th of May. I was with the Milwaukee road and at Los Angeles at the time, and there was considerable said about it, I know, in the newspapers, etc., but I was not familiar with any of the inner workings of it. I afterward learned from the Panama Railroad people concerning the activity of the Johnson-Locke Mercantile Company offering to establish a line between San Francisco and Panama, to take up the through traffic with the Panama Railroad if the Panama Railroad would
establish a line on the Atlantic between New York and Colon,
4810 and that was done about that time and continued until the making of the contract between the Pacific Mail and the Panama Railroad, December 18, 1895—a little over two years.

Q. What effect did that line have on transcontinental rates, if any?

A. I don't remember exactly what the effect was on the transcontinental rates.

Q. Do you remember anything about any change of transcontinental rates that was coincident with the operation of that line, whether caused by that line or whatever may have caused it?

A. My memory is not clear on what happened about that time in connection with the transcontinental rates, whether raised or reduced, or anything about them.

Q. Did you know about the establishment of the American-Hawaiian line?

A. Yes, sir.

Q. Was that done while you were connected with the Panama Railroad?

A. Yes, sir.

Q. What factor did that become in the transcontinental traffic?

A. It took the place of the so-called clipper line of sailing vessels, that the same people had operated or supported prior to the American-Hawaiian Steamship Line. Those new vessels built and put on the route around the Horn and through the Straits of Magellan, served to take the same class of traffic east-bound, namely, sugar from the Hawaiian Islands, with a certain amount of traffic from here, but not a great deal at the beginning, and west-bound they filled up with New York merchandise coming to San Francisco, in competition with the Panama Route and the rail line. But the rates they made were a good deal like the clipper ship rates, and brought to their line
4811 about the same kind and class of traffic.

Mr. DUNNE. Did you say the Magellan ships were sailing ships, Mr. Connor?

WITNESS. No, the clipper line ships went around the Horn. When the steamships were established they took the traffic that the clipper ships had formerly taken because at that time the clipper ships were abolished. Everything moved by the steamship and they came through the Straits instead of going around the Horn.

Q. Were you still in the steamship business at the time the American-Hawaiian line commenced operating the Tehuantepec route?

A. I think I had left the Panama Railroad before they began the operation of the Tehuantepec line.

Q. But you were still with the Pacific Coast Steamship Line, weren't you?

A. Yes, sir.

Q. How far north did the American-Hawaiian ships go—farther than San Francisco?

A. They stopped at San Francisco in the beginning of their operation and perhaps for a year or two, but about that time they ran to the Sound because they had developed quite a little traffic to and from New York and the Sound which prior to that time had been turned over at San Francisco to connecting lines to deliver on the Sound; and they could get their coal cheaper up there than here, and it was common knowledge here that it was a benefit to them to go to the Sound, make delivery of their freight, get their cheap fuel, and pick up the salmon that was available on the Sound for transportation to New York.

Q. Did the Panama route ever take traffic destined to Port-
4812 land and Puget Sound ports?

A. Yes, sir.

Q. How did that reach Portland?

A. It was transferred at San Francisco to O. R. & N. water lines.

Q. And when it went to Puget Sound?

A. Pacific Coast Steamship Line.

Q. During all the time you were connected with the Panama Route and the Pacific Coast Steamship Company, did traffic move that way to some extent?

A. Yes, sir.

Q. What revenue did the Pacific Coast Steamship Company and the O. R. & N. boat-line to Portland get out of traffic of that character? Did they get their local rates, or how was it arranged?

A. They got a percentage of the west of New York proportion, subject to a minimum.

Q. Do you remember how that compared with their local rates?

A. In most cases it was lower.

Q. Did you ever have any difficulty in getting the Pacific Mail boats to go up to the pier and take freight at Panama?

A. Yes, sir.

Q. What was the occasion of that?

A. They were paying the Panama Railroad Company a charge for lighterage service in the Bay of Panama which was according to the destination of the freight. Freight destined to Europe was subject to one charge and freight destined to New York a different charge. Upon the completion of the wharf at La Boca, which is at the mouth of the Rio Grande River, and about three miles from the Panama wharves proper, they were asked to bring their vessels to those
wharves and make direct delivery and pay a wharfage, and
4813 the wharfage required of them to pay was the same as the lighterage charge on New York cargo. The Pacific Mail considered that that charge was too high, too great, and refused to pay it, and tried to get them to reduce it; but the Panama Railroad refused upon the ground that they had all the lighters there; they had to lay them up and they had no other business for them, and the wharf had been a very expensive structure, costing nearly $3,000,000, and the drayage was a very large item of the expense, and putting the wharf into operation, and that the charge was reasonable under all the circumstances. They had declined to do this. This was only a short time, however, prior to the termination of the five-year contract. The termination of the contract put an end to the dispute, and when I put chartered vessels on from here, those vessels went to and from the wharf at La Boca, and on the making of the new contract it was understood that the Pacific Mail vessels would go to the wharf at La Boca. What the rate of wharfage was I do not remember. I know I was offered the opportunity of going there and handling the business at Panama for the Panama Rilroad, with the understanding that any arrangements I made for the Panama Rail-

road would be acceptable to the Pacific Mail. I didn't like the health there and didn't like to go, and didn't go. I took no more interest in the details of it, and I don't know what the final outcome was.

Q. Now, aside from your interest in transcontinental business, when you were with the Panama Route, did you have to do with the transcontinental business when you were with the Milwaukee and the Great Northern?

A. Yes, sir.

4814 Q. Previous to 1901, how did the Southern Pacific Railroad Company endeavor to route its trans-continental business, after the establishment of the Morgan Line, its Gulf Route, Sunset Route so-called? By trans-continental business, I mean first the seaboard business, from Atlantic seaboard territory.

A. My connection with the transcontinental business while with the Milwaukee road was that of a solicitor for the freight over our lines only and in connection with whatever other lines I could work the traffic; and it is my recollection that the Southern Pacific solicitors were never at any time to be depended upon to help get this traffic, whereas the other connecting lines with which the Milwaukee had rates and divisions could be depended upon. Now, that is the only way which I have of knowing anything about the Southern Pacific activities in soliciting. I don't know of my own knowledge that they bent their energies more one way than another.

Q. Except as you observed that?

A. I observed it in that way only.

Q. That you didn't get any help from them. How did the bulk of the business from the Atlantic seaboard territory move here, eliminating the Tehuantepec route and eliminating the Panama Route, taking only the Southern Pacific and its Gulf connections and the other transcontinental lines? How did most of it get here?

A. I had no reports or records, had no access to statistics of traffic movement, and I couldn't tell.

Q. I don't expect you to be accurate. Didn't you know how

4815 it was divided?

A. Only as a matter of common knowledge and as the word would pass among the men who were handling the business; but I have no knowledge that I could state for a fact.

Q. I quite understand you can't give statistics, but you were in that business actively for many years here in connection with the Panama road and the railroad. Didn't you at that time learn how the transcontinental business was moving from the seaboard?

Mr. Lovett. The witness has stated that all he knows about it is from hearsay, and the defendants object to it upon that ground.

Q. Go ahead and answer.

A. The Atlantic seaboard business, it was understood, moved mostly by the Sunset Route, while the more interior or western business, originating in Chicago territory, came by the Central Route. It was understood that the Sunset Route catered more for the Atlantic seaboard business than any of the other transcontinental lines. It was

a route over which they took special pains to make good time and did make good time. While I was soliciting New York as well as other transcontinental traffic east-bound and west-bound, I ran against the strong competition of good service via the Sunset, which so far excelled the service that could be had via Chicago or other transcontinental lines that we really had to throw up our hands to the Sunset.

Mr. DUNNE. Mr. Severance, what time are you speaking of now?

Mr. SEVERANCE. That was when he was soliciting for the
4816 Milwaukee road.

WITNESS. In 1893 and 1894.

Q. Did the Southern Pacific maintain a soliciting agency here?

A. Yes, sir.

Q. And you ran across this good service, you say?

A. Yes, sir.

Q. Did you ever learn that the Southern Pacific soliciting agents kept that a secret—the good service by the Sunset Route?

A. No, sir; as I say, the merchants had it all right.

Q. Did the Union Pacific also have an agency here?

A. Yes, sir.

Q. When you were soliciting for the Milwaukee road, did your line reach Omaha?

A. Yes, sir. Our line was between Omaha and Chicago and between St. Paul and Chicago and between Kansas City and Chicago.

Q. What were the relations between your agency and the Union Pacific agency in securing the routing of transcontinental business?

A. We co-operated very closely.

Q. And I believe you stated that you did not run across any co-operation on the part of the Southern Pacific?

A. No, sir.

Cross-examination by Mr. LOVETT:

Q. During what period did you say you represented the St. Paul here, Mr. Connor?

A. From November, 1892, to July 27, 1894.

Q. You were soliciting freight for the St. Paul during that
4817 time?

A. Yes, sir.

Q. You were working closely, you say, with the Union Pacific?

A. Yes, sir.

Q. Were the other solicitors for the eastern lines soliciting here at that time?

A. Yes, sir.

Q. What other lines in the east, east of Missouri River, had solicitors here?

A. The Rock Island, the Burlington, the Northwestern—the so-called Iowa lines; and then there were the Missouri Pacific, the Denver & Rio Grande, besides the Northern Pacific, the Canadian Pacific, the Great Northern, the Texas & Pacific for the so-called west of the Missouri River Railway lines.

Q. Did a number of the eastern lines—that is, the trunk lines east of Chicago—also have agencies here at that time.

A. Yes, sir. But at that time there was not so much activity by the strong lines in freight soliciting. The agencies they maintained here then concerned themselves more particularly in passenger business.

Q. Which of them had agencies here dealing with freight at that time?

A. I don't think the Gould lines had established an agency at that time, and I don't remember any lines that had a freight office in San Francisco—a freight representative.

Q. I am speaking now particularly of the lines east of Chicago.

A. So am I.

Q. Did the New York Central have an agency here?

A. That was established afterwards, I believe; not at that time.

4818 Q. Are you sure about that?

A. I am only sure in this way: that Mr. Gill, I think, was the first representative of them here in the freight way, and he was at the time I speak of with the Southern Pacific at Sacramento.

Q. How about the Pennsylvania?

A. They looked after passengers only.

Q. They did not have a freight agency here at that time?

A. Not at that time.

Q. Nor the Erie?

A. Nor the Erie at that time.

Q. Nor the Baltimore & Ohio?

A. The Baltimore & Ohio did. Mr. Harvey was a freight and passenger man, but it was during that time that he was given extra powers and salary, I think, to look after freight business; he told me about it at the time. I had known him a great many years as a passenger man only; he never had experience in the freight business, and he talked with me about the freight business. At the time he took up the representation of the freight department, which was along about that time, he explained it. That is the only one I now remember who was connected with the freight department here.

Q. Which of these lines east of the Rocky Mountains, we will say, like the St. Paul, the Northwestern, the Burlington, the Rock Island, was actively working freight by way of Ogden?

A. All of them.

Q. You worked all that you could by way of the Union Pacific and Southern Pacific, didn't you, Mr. Connor?

A. Yes, sir: that is the only outlet that I had, you know.

Q. You didn't work with the Atchison on transcontinental business?

4819 A. No, sir, because they were competing with us between Chicago and Kansas City, and if they got their hand on it we might lose it altogether.

2931

Q. So, you worked directly with the Union Pacific and the Southern Pacific and the Northwestern——

A. Through the Omaha gateway, and with the northern lines through the St. Paul gateway.

Mr. SEVERANCE. Judge, I am sure you do not mean to ask a question that does not mean just what he said. He said he did not work with the Southern Pacific. He said he worked with the Union Pacific. Your question was if he worked with the Union Pacific and Southern Pacific.

Mr. LOVETT. He said he did not work with the Atchison.

Mr. SEVERANCE. Yes, but on direct examination he said he never worked with the Southern Pacific agency, but with the Union Pacific, and I think perhaps he didn't understand your question.

WITNESS. I understood your question to mean whether I worked business via the Southern Pacific.

Mr. LOVETT. Via the Ogden gateway.

WITNESS. Yes, that is what I mean. I did not mean the representatives of the railroad, but I mean the railroad.

Mr. LOVETT. That is what I mean. I was not asking you about working with the representatives.

Mr. DUNNE. Mr. Severance asked him if he did not work with the representatives of the Southern Pacific, and Judge Lovett asked him if he worked business over the Southern Pacific to Ogden, and he said that was the only connection he had.

4820 Mr. LOVETT. The witness understood the question. I was asking more particularly about the lines with which you worked rather than about their agents.

WITNESS. That is right.

Q. Your only outlet for Pacific coast business practically was the Union Pacific-Southern Pacific by way of Omaha and Ogden, wasn't it?

A. Yes.

Q. And that was the way you worked all the business you moved?

A. Yes, sir.

Q. Didn't the St. Paul do the same?

A. It is the St. Paul I am speaking of.

Q. Didn't the Northwestern do the same?

A. Yes, sir.

Q. And the Burlington and Rock Island? They worked more particularly with the Denver & Rio Grande, didn't they?

A. They had long lines to Denver.

Q. And they worked with the Denver & Rio Grande and the Southern Pacific via Ogden?

A. West of Ogden, yes, sir.

Q. That is true also of the Missouri Pacific, isn't it?

A. Yes, sir.

Q. Then, the fact is that the Chicago, Milwaukee & St. Paul, the Chicago & Northwestern, the Union Pacific, the Burlington, the Rock Island, the Missouri Pacific and the Denver & Rio Grande

were all actively working during that time for Pacific coast business by way of Ogden, weren't they?

A. Yes, sir.

Q. Everything that they controlled for California naturally passed over the Southern Pacific by way of Ogden, didn't it?

A. That was their open gateway.

4821 Q. And the Southern Pacific got their transportation from Ogden to San Francisco out of that business. About what distance was that, do you happen to remember?

A. 833 miles between San Francisco and Ogden, I think.

Q. What haul would the Milwaukee get out of it from business originating, say, in Chicago?

A. They would get about 500 miles between Omaha and Chicago.

Q. And the Union Pacific about a thousand?

A. It is more than that, I think.

Q. It is about a thousand from Omaha to Ogden?

A. A thousand from Omaha to Ogden?

Q. Yes.

A. I think about 1100.

Mr. SEVERANCE. It is a thousand miles and a fraction of a mile, according to your signs.

Mr. LOVETT. Yes.

Q. The Northwestern got about the same length of haul out of it that the Milwaukee got?

A. Yes.

Q. And the Burlington and the Rock Island from Chicago would get something like a thousand-mile haul, wouldn't they?

A. To Denver, yes.

Q. So, out of such business as the Milwaukee got a haul of 500 miles, the Southern Pacific would get a haul of 800 and some odd miles; that is true, is it?

A. Yes, sir.

Q. Do you recall any other lines east that were working for California business by way of Ogden than those you have mentioned?

A. I don't think of any just now.

Q. Do you know what lines at that time were working business

4822 for California by way of El Paso other than the Southern Pacific?

A. The Texas & Pacific.

Q. And its connections. Do you know whether the Missouri, Kansas & Texas, the St. Louis & San Francisco and other lines leading to the southwest——

A. The Texas & Pacific had an office here and a representative; the Missouri Pacific had also. The Missouri Pacific worked Southern California business in connection with the Texas & Pacific because they were sort of family lines. I don't remember that the Frisco lines were represented down here except through the Santa Fe.

Q. The Rock Island had not extended its line to El Paso at that time?

A. No, sir.

Q. With all of these lines working for the Southern Pacific by way of Ogden, there wasn't very much occasion for the Southern Pacific to be working it that way, Mr. Connor?

A. I don't know.

Q. You were all doing all you could to get business that way, weren't you?

A. We were all working for our own lines.

Q. Yes, but incidentally for the Southern Pacific?

A. Incidentally we had to give it to the Southern Pacific; we couldn't get around that.

Q. That is the point. All the rates that you made to California had to be assented to by the Southern Pacific, hadn't they? In other words, you could not make rates here without the consent of the Southern Pacific, could you?

A. That is my understanding; but at that time I was representing the company in the capacity of a solicitor and had nothing to
4823 do with the making of rates, or agreeing to rates, or the publishing of tariffs.

Q. But it was your understanding that no lawful rate could be made to California by your line without the concurrence of the Southern Pacific?

A. That is right.

Q. The first contract between the Panama Railroad and the Pacific Mail, about which you testified, expired in December, 1900, did you state?

A. Yes, sir.

Q. And the next contract was made in June, 1902; is that correct?

A. That is about the time.

Q. Yes, about the time. Now, it was between those dates that you operated for the Panama Railroad certain steamers on this coast?

A. Chartered vessels on the Pacific, yes.

Q. Were those English ships?

A. No, sir, American bottoms.

Q. American bottoms, all of them?

A. Yes, sir.

Q. What was the result of that to the Panama Railroad, do you happen to remember? Was it profitable or otherwise?

A. Otherwise.

Mr. SEVERANCE. What was the question?

Mr. LOVETT. I asked him what was the result of that to the Panama Railroad, whether it was profitable or otherwise.

Q. Do you know whether it was very much otherwise?

A. One very expensive factor was the strike that occurred during that time on the water-front, which involved our vessels that were being paid by the day, under a government form of charter for those vessels, and having them in port, one of them 21 or 22 days, and paying a large sum for detectives to keep our non-union stevedores at work, and bedding them and feeding them on the dock, and all

4824 that sort of thing, contributed very largely to our expense during that period. If the extraordinary expense from that item and the item of damage from inexperienced stevedores, bad stowage, could be deducted, I don't know whether the balance-sheet would look all right or not. I am not sure as to what extent the loss went, whether it was greater or less than the amount that could be charged to that one cost of the strike.

Q. That is rather incidental to the steamship business, isn't it?

A. How is that?

Q. I say, isn't that rather incidental to the steamship business? Don't they have those strikes?

A. Yes, you take your chances.

Q. And that is one of the chances?

A. Yes.

Q. You don't know what the result of the operation of that enterprise would have been if that expense were eliminated?

A. I do not know. I merely know in connection with this matter that the Panama Railroad office in New York made an arbitrary allowance out of through rates to the Pacific Ocean line of 40 per cent instead of 45 which the Pacific Mail had received under its contract, and that I was informed in New York, by our people there, that they had lost considerable money on that basis. But I don't remember the figures now. Nor do I know, as I said before, whether or not it would have proven profitable without the strike.

Q. Did you do any coast-wise business?

A. No, sir; no stops intermediate.

Q. None of the ships was wrecked, I presume?

A. No, sir.

Q. How long were they operated—about a year and a half?

4825 A. We put the first sailing on the 18th of December, 1900, and the last one left here in June, 1902, I believe.

Q. What became of the "St. Paul"?

A. After we had had her three trips we turned her back to the owners, who operated her to St. Michaels and Nome. She was owned by the Alaska Commercial Company. The period for which we had her was a period for which they had no use for her. We would have taken her for a little longer time except they could not spare her any longer. She went back into the regular service after that.

Q. What was the size of these ships that you operated during that time?

A. Which ones?

Q. These independent lines.

A. The "Pleiades" and "Hyades" would carry, each, 4500 tons—sister ships; the "Argyle" about 3800 tons; the "Leelanaw" 2400; the "Enterprise" 3200; the "Charles D. Lane" 3000; that is about the capacity of them.

Q. And what ships were operated on the Panama Route by the Pacific Mail during the time of these contracts with the Panama Railroad Company?

A. They had the "Newport," the "City of Para," the "Peru," the "City of Sydney." Those were the four largest vessels. Then there were the "San Juan," the "San Blas," and the "San Jose"—three ships of about the same size, carrying about 35000 packages of coffee; the "Acapulco," the "Colon," and the "Barracouta."

Q. How often, did you say, the sailings were during the period of the first contract?

A. From San Francisco three times a month—on the 8th, 18th, and 28th.

Q. How were the rates from San Francisco to points at
4826 which these ships touched, as compared with the proportion of the through New York rate?

A. Very much higher.

Mr. SEVERANCE. I can't hear you, Judge.

Mr. LOVETT. I asked him how the rates from San Francisco to these Central and South American ports, at which these ships touched, compared with the proportion of the through rates to New York. He said very much higher.

Q. You testified on your direct examination, as I understood, that after the American-Hawaiian Company put on its steamships that it sometimes turned over to the O. R. & N. boats here business from the east for Portland points and the interior there. Just when was that? Do you remember about what years, during what period?

A. I don't recollect the date.

Q. Very little of that business, wasn't there, Mr. Connor?

A. I was not connected with the O. R. & N. at that time, but I was connected with the Panama Railroad, and the Panama Railroad had divisions with the O. R. & N. on that Portland-New York traffic, or New York-Portland traffic, and I learned that the American-Hawaiian had been successful in getting better divisions out of the O. R. & N. than I had, and I went to the O. R. & N. on that subject, to get it adjusted to our satisfaction. That is the item which fixes it in my mind, that it was at the time I was with the O. R. & N. that the American-Hawaiian steamers began handling Portland traffic.

Mr. SEVERANCE. You mean when you were with the Panama Railroad.

WITNESS. When I was with the Panama Railroad.

4827 Q. You said when you were with the O. R. & N.

A. I meant the Panama Railroad. Of course the Panama Railroad was competing on the same traffic with the American-Hawaiian Steamship Company out of New York to Portland; and under the arrangement they had with the O. R. & N., the O. R. & N. received from here less on the same package than they would have received if we delivered it to them, which was naturally against us.

Q. That is, they gave the American-Hawaiian line a better division than they gave you?

A. Yes.

Q. When was that?

A. I don't remember the dates.

Q. When were you with the Panama Railroad?

A. From February 11, 1898, to December 10, 1903.

Q. Was this in the early or the latter part of your connection?

A. The middle part, I should say.

Q. When was the Hawaiian line of steamships put on?

A. About the middle of my service.

Q. When was that?

A. About 1900; somewhere in there.

Q. You can't fix the date more accurately than that?

A. They must have gone on about 1899, sometime in the summer of 1899. I tried to get the American-Hawaiian to operate via Panama, stop their boats over there instead of going around through the Straits, and give us that sugar to haul. I got one of their engineers to go down from the Isthmus on the other side and inspect the wharf facilities over there, and he turned up his nose at the wharf facilities, and there was nothing doing after that. That was in 1899, I think.

Q. They had not begun to operate their steamers then?

4828 A. Yes, they had. They were operating around the Horn, and we felt their competition and wanted to co-operate with them instead of competing. What I was after was the rail haul across the Isthmus.

Q. Did the O. R. & N. have any divisions by the Panama Railroad from the Atlantic seaboard when you were with it in 1894?

A. I negotiated the arrangement myself.

Q. With the Panama Railroad?

A. Yes, sir.

Q. And how did that traffic come here—by the Pacific Mail?

A. By the Pacific Mail.

Q. What was the traffic that moved that way?

A. Manufactured goods.

Q. Manufactured goods?

A. From the east, yes, sir.

Q. Were the quantities large or small?

A. Oh, pretty large. We would have every ten days coming in here from 20 to 75 tons, sometimes a hundred tons.

Q. 20 to 75 tons?

A. It was slight at first, and it grew.

Q. Now, that was when—1894 and 1895?

A. That was in 1895, I think, that the arrangement was made; for those divisions that was 1896.

Q. Where was that business moving—to Portland or to the interior.

A. To Portland mainly.

Q. To Portland mainly?

A. Astoria and Portland. Once in a while a stray package would come along to an interior point, rail connection from Portland.

Q. During what period did you say you were connected with the O. R. & N.?

A. I went to them July 27, 1894; I left them to go to the Panama office on the 11th of February, 1898.

4829 Q. What was your position immediately before you went with the O. R. & N.?

A. The Chicago, Milwaukee & St. Paul. I had been traveling freight and passenger agent.

Q. You left the Chicago, Milwaukee & St. Paul to go to the O. R. & N.?

A. Yes, sir.

Q. Was that during the receivership of the O. R. & N?

A. Mr. McNeil was appointed receiver on the 4th of July, 1894, and I went there immediately afterward, the 27th of the same month.

Q. Do you remember how long the receivership lasted?

A. About a year and a half. I was there beyond the receivership, of course. The receivership, I remember, was about a year and a half. I remember it by reason of the statements made about that time of what Mr. McNeil had accomplished in so short a time—the rehabiliment. We had a great big washout there, and restored the line to proper condition and all that sort of thing, without putting out any receiver's certificates. Got the business to pay for it. And the year and a half was fixed in my mind at the time,—how short a time it took him to put the line in shape.

Q. The line had been operated by receivers prior to July, 1894?

A. Yes, sir.

Q. You were not connected with it at that time?

A. No, sir.

Q. Now, in this business which you testified, on your direct examination, moved from San Francisco to Montana points, what Montana points do you mean?

A. Montana common points.

4830 Q. Can you name the principal ones?

A. The principal ones would be Butte, Helena, Great Falls, Deer Lodge, and that territory; then the local points as well. The most important local points along the line of the Great Northern or Northern Pacific were Missoula, Billings.

Q. That business moved both by Portland and the O. R. & N., and to Spokane over the Great Northern and to Wallula in connection with the Northern Pacific?

A. Yes, sir.

Q. Or to Huntington in connection with the Oregon Short Line?

A. The Short Line was mostly in the Anaconda and Butte business.

Q. Which way did most of it move, do you remember?

A. We preferred to handle it via Spokane for the reason that the O. R. & N. got better divisions on its longer haul; but if we had discovered the car, run across the business (so to speak) in connection with a Northern Pacific man or representative, we were loyal to him and worked it his way and gave him the car at that point.

Q. That is customary in railroad practice?

A. Yes, sir.

Q. Now, you said that business that moved by the Oregon Short Line, that is, by way of Huntington, moved mostly to Butte and Anaconda?

A. To Butte and Anaconda.

Q. I believe you testified on your direct-examination that you did not know of the Southern Pacific moving business to Montana common points by way of Portland, but it moved its business to Ogden; is that correct?

A. That is my understanding, from the fact that it was the shortest route for them and that it was the original way to handle it.

4831 The Shasta Route is considered a pretty hilly route and there is no time saved, but there would be time lost that way. And yet I have no direct or positive knowledge as to their instructions to their people.

Q. As far as you got a correct idea of the movement of the business, you were competing for the business?

A. That was the talk.

Q. You understood it was moving by way of Ogden and the Oregon Short Line?

A. Yes, sir. No, not the Oregon Short Line, but the Utah & Northern. The Oregon Short Line was the one that came down from Portland to Green River.

Q. What I now call the Oregon Short Line.

Mr. SEVERANCE. It is now the Oregon Short Line.

WITNESS. Yes. At that time we called them by the different names.

Q. At the time you mention the Oregon Short Line was the Utah & Northern?

A. Yes, sir.

Q. Or what you mean by the Utah & Northern is now part of the Oregon Short Line?

A. Yes, sir. It was narrow-gauge at that time.

Q. From Ogden to Butte and other points in Montana?

A. Yes, sir.

Q. So that was the line that the Southern Pacific worked, as you understand, for Montana business, by way of Ogden and the Oregon Short Line. What was the difference in distance?

A. I don't remember those figures.

Q. At all events, the Southern Pacific could not, as you

4832 understand the situation, move business to Montana points without going either over the O. R. & N. line or the Oregon Short Line for a portion of the way, could it?

A. Which line could not?

Q. The Southern Pacific.

A. The Southern Pacific could take it from here to Ogden and the Utah & Northern from there to Anaconda and Butte without going over the O. R. & N.; but to points beyond Butte it would have to go over the Great Northern or the Northern Pacific, and those lines

would then get their local from that point, or whatever divisions they would agree on.

Q. You didn't understand my question. I asked if it was not true that the Southern Pacific could not carry business from San Francisco to Montana points without such business passing either over the Oregon Short Line, or Utah & Northern, or over the O. R. & N. lines; in other words, it would have to go over either one or the other?

A. Yes, sir, it would have to go either by Portland or Ogden, and in either case it would go by the O. R. & N. via Portland or the Utah & Northern via Ogden.

Mr. SEVERANCE. What about the Northern Pacific out of Portland?

WITNESS. It would go either way. They had divisions for the Northern Pacific, too, that way, via Portland.

Q. Via Portland?

A. Yes, sir, I believe so. That is, it took in Northern Pacific local territory between Portland and Montana, and it extended to and included, I think, Helena as well as Butte.

4833 Q. From San Francisco?

A. Yes, sir. In that event the Northern Pacific got a bigger division on the through traffic than if it went via Ogden and Butte and they took their little short haul.

Q. How would that be for the Southern Pacific as against the Ogden Route?

A. The Southern Pacific would get more out of it via Ogden.

Q. A good deal better line too, wasn't it?

A. Shorter, quicker.

Q. Shorter and better line as to grades and character of road?

A. Easier grade, I believe. Still I don't know. The Sierras is a pretty heavy grade, too.

Q. I believe you have testified on your direct-examination that the so-called war in rates between Portland and San Francisco commenced between the O. R. & N. boats and the steam schooners.

A. Yes, sir.

Q. When was that?

A. I will say that the conditions of competition were very sharp when I joined the O. R. & N. in July, 1894, and found it necessary to make a great many reductions in our regular rates to meet that competition, and it was that continuous reduction and the issuing of special rate advices that caused the irritation and made it necessary to finally adopt, in a year or so afterwards, a flat rate of a dollar.

Q. There were a good many of those steam schooners plying between San Francisco and Portland at that time?

A. There were not. There were two. There was one for a while, at the beginning of my time with the O. R. & N. The
4834 steamer "Truckee," afterward the "Alice Blanchard," which is now the "Chico," I think, unless she has changed again, and solicitors or men working upon a commission basis with the

owners of the vessels, had induced those owners to permit them to solicit cargo north-bound, and they agreed to carry it and deliver it and pay the expenses of loading and discharging and damages, if any, the solicitors getting a commission upon the amount of business they secured. We tried to get the steam schooners to desist from this character of irregular competition, because the solicitors had no interest whatever in the cost of transportation, merely taking the business at whatever rate they could get.

Q. Well, the number of steam schooners increased afterward, didn't it?

A. Not on that route; we never had any greater number than two steamers competing with us on that route, as I remember.

Q. Between San Francisco and Portland?

A. Between San Francisco and Portland.

Q. How is it at the present time, do you know?

A. I have kept no track of it lately.

Q. You don't happen to know that the number of steam schooners in the business between Portland and San Francisco has increased considerably?

A. I do know that the number of steam schooners operating on the coast is greater than it was at that time.

Q. But you don't know to what extent they engage in the San Francisco-Portland business?

A. That is it. I do not. It is the north-bound merchandise carried by them that cuts any figure at all. South-bound it is all right.

4835 Q. Didn't they continue in the business after this restoration of rates that you testified took place in 1895?

A. They set up at that time the condition of their north-bound traffic: that as the machinery was all in the stern of the vessel it left the bow very high, and they needed that cargo to bring the head of the steamer down so they could get through in a northwest wind; that it would be better for the vessel and better for the time, and that 100 tons would be sufficient perhaps to give her proper trim.

Q. And you allowed them to take that much?

A. There was an agreement between them whereby they would get that much cargo, and after that they got that much cargo.

Q. That condition continued as long as you were connected with the O. R. & N., didn't it?

A. I believe it did, yes, sir.

Q. Well, didn't they take all they could get under this differential arrangement?

A. No, they were satisfied with that quantity.

Q. They limited themselves to that quantity, did they?

A. Yes. They played fair, so to speak. They kept their part of the agreement.

Q. Did any other schooners come in for that trade before you left?

A. No, sir.

Q. When did your knowledge of it cease?

A. When I left the O. R. & N. to go to the Panama Railroad in February, 1898, my attention was turned to almost everything else; my work and my attention were in another direction and not in that connection. I lost the threads of the actual condition of the competition.

4836 Q. Don't you understand, Mr. Connor, that the water rates as between Portland and San Francisco were always fixed as the result of competition between the O. R. & N. boats and the steam schooners rather than as between the O. R. & N. boats and the Southern Pacific Railroad?

A. Why, they always were up to the time of that rate war.

Q. Up to the time of that rate war?

A. The Southern Pacific prior to that, you know, never had, apparently, any eye open on that traffic.

Q. Never ceased attempting to meet the water rates, did they?

A. No, sir, their rate was $1.30, you see, first-class, and they had no great number of commodity rates in there. It was simply a tariff without any use for it. I understood at that time that they did not want that traffic, did not consider it desirable. And we never considered the Southern Pacific a competitor for that traffic until this rate war took place, and then, as I say, it came about through the Willamette Valley difficulty.

Q. You happened to discover that the agreement of the Southern Pacific was necessary in order to restore the rates?

A. It having cut its rate in the meantime to the low figure it did and on a weight basis besides, 12½ cents weight, was even lower than some of our rates at a dollar, because ours were by measurement as well as weight.

Q. Well, you don't have any personal knowledge of that competition in the Willamette Valley, do you, Mr. Connor?

A. I have not, only to know that the steamers of the O. R. & N. did ply on the river away up as far as Eugene and Junc-

4837 tion City when they could get there, when the stage of water permitted, and that the Southern Pacific rail lines touched all the same points along the river; and further than that I don't know the kind of competition or the traffic they were fighting for, nor the extent of the trouble they got into.

Q. And you don't know just what conditions were existing at the time?

A. Nothing more than that the Southern Pacific, on account of the ocean war, probably saw their opportunity to line up and get a tariff in there at less than—well, it is a figure-head anyway. They were not carrying any freight before that on that line, and they didn't expect to carry any freight after that, but they were to be reckoned with and the restoration of rates would be their time to discuss the Willamette situation.

Q. The O. R. & N. never did carry any considerable amount of freight between San Francisco and Portland in competition with the boat line, did it?

A. Not very much. Their interest was mostly in the passenger way—not freight.

Q. What was the character of the freight carried by the O. R. & N. boats, largely?

A. North-bound, sugar, salt, canned-goods, dry-goods, groceries, general merchandise, and California products.

Q. How were the north-bound cargoes compared to the south-bound?

A. A little less on the 12 months.

Q. The boats seldom had a full cargo north-bound, did they?

A. Sir?

Q. It was seldom that the boats had full cargo from San Francisco to Portland, wasn't it?

A. No, sir. There were two or three months in the year we
4838 were a little short of cargo, during the winter months, but the balance of the year we managed to keep full cargoes going north. South-bound we were full nearly all the year round.

Q. The south-bound cargo consisted of what?

A. Grain and flour and agricultural products.

Q. Lumber?

A. Not much lumber; small lots of lumber once in a while; some iron, paper.

Q. Mainly grain and flour?

A. Grain and flour.

Q. Potatoes?

A. Potatoes. We had a lot of paper from the Willamette mills that we carried from up there regularly.

Q. What boats were operated on the O. R. & N. line when you were connected with it?

A. The "Columbia" and the "State of California."

Q. What was the size of those boats?

A. The "Columbia" could carry 1200 or 1300 tons weight—that is, on a weight basis. She could carry more than that if she could get it in; and the "State" could carry from 900 to 1,000.

Q. And how often did they run?

A. Every five days.

Q. Five days' sailings?

A. Yes, sir.

(A recess was here taken until 2 o'clock p. m.)

By Mr. DUNNE:

Q. Mr. Connor, what do you understand by Central Freight Association territory?

A. I don't remember that term, Mr. Dunne. Central Freight Association territory?

Q. Yes. Are you familiar with that expression?

A. No, sir.

Q. It does not indicate any special territory in your mind?

A. Not at this moment.

4839 Q. I will ask you, then, this question: When you were with the Milwaukee & St. Paul, you spoke of meeting sharp competition of the Southern Pacific for the Sunset Route with respect to the Atlantic seaboard business.

A. Yes, sir.

Q. You recall making that statement?

A. Yes, sir.

Q. You also stated, I believe, that the Sunset Route took a good deal of that Atlantic seaboard business, that it was carried around by the Southern route?

A. Yes.

Q. At the time you were with the Milwaukee & St. Paul, that was in the nineties sometime, wasn't it, 1893 and 1894?

A. Yes, sir.

Q. At that time how far east of the Atlantic seaboard did the influence of that Sunset Gulf route extend?

A. East of the Atlantic seaboard?

Q. No, west of the Atlantic seaboard.

A. I don't recall that I ever in my own mind fixed any points defining the limits of that influence or that competition, but it was generally understood to be the territory that the Sunset Route made common rates apply to—that is, made New York rates apply.

Q. With that statement can you give us a general idea as to the extent of that territory?

A. I think it went back as far as Pittsburg.

Q. And that was so as of the time that you were with the Milwaukee & St. Paul?

A. Yes, sir.

By Mr. SEVERANCE:

Q. At the time you were with the Panama Railroad and had the ships running to Panama, during the interregnum between the
4840 two contracts with the Pacific Mail, did the Pacific Mail still interchange business with you at Panama, or were they out of it?

A. No, sir, they did not to my knowledge unless it would be something that was destined to points locally from Panama, points like Colon or Port Limon, east coast ports, but no through traffic—only on foreign business.

Q. I think you stated in answer to Judge Lovett, when he was inquiring as to whether that line was profitable, that the Panama Railroad Company allotted to ships on this side of the Isthmus only 40 per cent of the through rate.

A. Yes, sir; that is, San Francisco to New York rate.

Q. Do you know whether those ships, even with the handicap of the strike and so on, would have shown a profit if they had been allotted 50 per cent of that through rate?

A. I do not know, because I don't know what the amount of loss was, and I don't know the total amount of revenue earned by the

ships during that period. I did not charge my mind with them. I had them on a book which I kept for that purpose, which was destroyed in the fire.

Q. So you don't know what that loss was?

A. I do not.

Q. Or whether the extra 10 per cent would have covered it?

A. I do not know.

Mr. LOVETT. The Pacific Mail did not get the extra 10.

Mr. SEVERANCE. Yes, they did under that new contract; 45 under the old contract and 50 under the new one.

Q. Do you know whether any Oriental business moved to Portland by way of the transpacific ships to San Francisco and then over your boat line, when you were with the O. R. & N.?

A. There were divisions in that way on certain traffic and
4841 there was a little business moved, but no large amount. We made divisions to cover Calcutta bags and that sort of stuff, once a year.

Q. Calcutta bags?

A. That sort of traffic, yes, sir.

Q. Some of it moved, but not very much?

A. Not very much; once a year there would be a bunch of it come along.

Q. One question Judge Lovett put to you was as to whether the Southern Pacific had any way to route Montana common points other than by Ogden and the Short Line or by Portland and the O. R. & N. I think you assented to that. Now, wasn't there another route by Portland by which they could reach Montana common points?

A. Yes. I think I corrected the statement at the time—that they also had divisions in with the Northern Pacific.

Q. Did the Northern Pacific at that time have divisions in from St. Paul to San Francisco in connection with the Southern Pacific?

A. I believe they did. They had tariffs and divisions in for points outside of St. Paul, like Fargo and Jamestown and Grand Forks and all through there, and Winnipeg, and I am quite certain that St. Paul was included, although I can not say for a positive fact. They took oranges up there over that route.

Q. Judge Lovett was also asking you as to whether the route by Portland to Montana points wouldn't have been a roundabout route. What is the comparative distance from here to Portland and from here to Ogden?

A. It is 772 miles to Portland and 883 miles to Ogden.

4842 Q. And you moved traffic by Portland and the boat?

A. In connection with the steamer line from San Francisco to Portland, yes, sir. We could have made better time by the water line than the rail lines make on freight usually.

Q. You ran your ships at that time every five days?

A. Yes, sir.

Q. And how long were you making the passage from here to Portland?

A. 52 hours.

Q. The Shasta Route freight, fast freight, was how long?

A. I don't think they had a fast freight service on there.

Q. Well, freight service, fast or otherwise, how long did it take them to move the stuff?

A. Five or six or seven days.

Q. That was daily service, wasn't it?

A. A train out every day, yes, sir.

Q. You stated that previous to the rate war the Southern Pacific line to Portland had not figured in that competition for Portland business. How was it after the rates were adjusted? Did they carry freight traffic to Portland?

A. I can't tell now of any material quantity of traffic that they carried, excepting such as would arise from the shipper in San Francisco having an order, for instance, for several little lots to go to points reached via Portland. His dray could load up and take at one trip to the Southern Pacific freight-yard enough freight to fill his dray and he would have half a dozen packages for Portland as well as for other points that had to go that way and couldn't go any other.

In that way there would creep into the Portland business a few
4843 packages. I get this from the fact that I would catch business going that way, and I would go to the shipper and find out why I didn't get it, and he would explain it to me that way—not that he intended to ship on the Southern Pacific to Portland, but it wasn't worth while to make a special trip down to the Oregon dock with it.

Q. How about business to Montana points? You stated you were looking after that pretty carefully. What steps did you take to find out whether the traffic was moving by that route, the Ogden Route, to Montana points?

A. Well, we would have a man go to the Southern Pacific freight-sheds every day, maybe once or twice a day, meander around, and see what he could find out in the way of marks.

Q. And when he found stuff going that route to Montana, did he always know what those marks meant?

A. If we could not get it from the shipper we would telegraph our connection at the other end of the line and get him to work on the consignee and try to get a routing order.

Q. For subsequent shipments?

A. For subsequent shipments, or maybe this one if they hadn't got too much of it hauled.

Q. Get it away from them if you could? That was what you were here for, wasn't it?

A. Practically.

Q. Did you find also that in those days the Southern Pacific agency here in San Francisco was on to its job, too?

A. They were pretty active on that Montana business.

By Mr. LOVETT:

Q. In answer to questions by Mr. Severance you stated the distance from San Francisco to Ogden and from San Francisco to Port-
4844 land, in comparing the length of the Southern Pacific haul on Montana business. What is the distance from San Francisco to Tacoma by way of Portland and the Northern Pacific? Do you know?

A. I believe it is 185 miles from Portland to Tacoma.

Q. How far is it from Tacoma by the Northern Pacific to Butte, Montana? Do you know?

A. I don't remember that.

Q. As a matter of fact, the Southern Pacific would take the business to Portland and turn it over to the Northern Pacific, and the Northern Pacific then take it up to Tacoma. It would be almost as far from Butte as when it left San Francisco, wouldn't it?

A. I don't remember the distance from Tacoma to Butte. It is 1,245 from San Francisco to Butte, and I should guess that the difference is about a couple of hundred miles.

Q. But you don't know the exact distance?

A. I don't know that.

Q. At all events, I believe you did testify that the business handled by the Southern Pacific, so far as you knew, moved by way of Ogden.

A. Always by way of Ogden.

Q. There is a question I forgot to ask you before, Mr. Connor. You say that you continued with the O. R. & N. some time after the termination of the O. R. & N. receivership. You continued with the O. R. & N. up to 1898, was it? What date in 1898?

A. February 11, 1898.

Q. Had the O. R. & N. come under the control of the Union Pacific at that time? Do you remember?

A. It had not.

Q. It was still independent of the Union Pacific at that time?

A. Yes, sir.

By Mr. SEVERANCE:

Q. Speaking of this matter of distance to Butte from Ta-
4845 coma: do you remember the distance from St. Paul to Tacoma by the Northern Pacific?

A. No, I do not.

Q. About 1,800 miles, isn't it, or don't you remember?

A. Those are figures that have entirely gone out of my head: I have forgotten them.

Q. You said you used to be with the Great Northern in Minnesota, and I didn't know but what you might remember those distances.

A. I wasn't with them in the east.

Q. Oh, you were with them out here?

A. Out here.

Q. When you were with the Great Northern here in San Francisco, did any traffic move to San Francisco from St. Paul by way of the Great Northern?

A. Yes, sir.

Q. What classes?

A. Any class that I could get hold of.

Q. What classes were you able to get hold of—all classes?

A. All classes that I can think of.

Q. How did it move?

A. It moved over the Great Northern from St. Paul via Grand Forks, Great Falls, Helena, and Butte. There it came down over the Utah & Northern to Pocatello; and, if in carloads, to secure through transportation without transfer, it had to go east to Green River, then back through Ogden on account of the broad-gauge line that way; later, a year or so afterward, they finished the broad-gauging or the standardizing of the line from Pocatello to Ogden, and afterward it came that way.

Mr. LOVETT. Is that the Great Northern business you are speaking of?

Mr. SEVERANCE. Yes, the Great Northern.

Q. Was that before the Great Northern was built through
4846 to the coast?

A. That was after they had commenced building west of Pacific Junction and before they reached Spokane.

Q. When they landed in the interior, then?

A. About the time they got to Spokane with the Great Northern, the Utah & Northern got its broad-gauge in to Ogden from the north. They had it broad-gauged from Butte down as far as Pocatello, and it was about the time the Great Northern got into Spokane that the broad-gauge was completed between Pocatello and Ogden direct.

4847 H. G. TOLL,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Toll, where do you live?

A. San Francisco.

Q. How long have you lived in San Francisco?

A. This last time, since last October.

Q. Previous to that did you live here?

A. Previous to that I lived here about sixteen years.

Q. What is your business?

A. I am clerk of the Western Pacific.

Q. And were you ever connected with the Southern Pacific?

A. Yes, sir.

Q. In what capacity?

A. Clerical position.

Q. In whose office?

A. In the local office and also in the general freight office.

Q. What kind of clerical position did you hold?

A. When I left the employ of the Southern Pacific I was chief clerk in the general freight office.

Q. What year was that?

A. That was in 1905.

Q. And how long had you been the chief clerk?

A. I had been chief clerk for four years.

Q. Previous to that what was your position?

A. Previous to that I was in charge of the solicitation; that is, I handled the correspondence regarding solicitation of freight, under Mr. Sproule.

Q. When was that?

A. That was in 1901.

4848 Q. Previous to that what was your position?

A. Previous to that I was in various positions in the office—corresponding clerk to the assistant general freight agent, rate clerk at the counter, tariff clerk, claim department, and tracing department.

Q. Do you remember the occasion of the Union Pacific purchasing control of the Southern Pacific?

A. I do, yes, sir.

Q. Previous to that time how did the Southern Pacific people here endeavor to route their business from the Atlantic seaboard territory?

A. By Atlantic seaboard, you speak, I presume, of east of Pittsburg?

Q. Yes, east of Pittsburg.

A. By Sunset-Gulf.

Q. Who were the soliciting agents who were working that business here at that time for the Southern Pacific?

A. At San Francisco, Mr. G. W. Fletcher.

Mr. DUNNE. You mean previous to 1901?

Mr. SEVERANCE. Yes.

Q. And did he have solicitors under him?

A. He did.

Q. Who were they? Do you remember Mr. Graham?

A. I don't believe that Mr. Graham was ever under Mr. Fletcher.

Q. Whom was he under?

A. Mr. Graham was the district freight agent at San Jose. He may have reported to Mr. Fletcher at one time; I believe he did. I think at one period that Mr. Fletcher had charge of all the soliciting agents in the state, and Mr. Graham may have reported to him at that time.

4849 Q. Were you with the road at any time when Mr. Graham was at work here in the city?

A. I was, yes, sir.

Q. What was his position then?

A. Assistant general freight agent.
Q. Is Mr. Fletcher living now?
A. He is not.
Q. Do you know Mr. Booth?
A. S. F. Booth?
Q. Yes.
A. Yes, sir.
Q. What is his position now?
A. His position now is general agent of the Union Pacific.
Q. Where?
A. San Francisco.
Q. How long has he held that office?
A. I think about four or five years; about four years I should say.
Q. Previous to that what was his position?
A. Previous to that he was with Mr. Stubbs in Chicago.
Q. He came from Mr. Stubbs in Chicago to become the general agent of the Union Pacific here?
A. Yes.
Q. Previous to being with Mr. Stubbs what was his position?
A. He was district freight agent at Fresno, California.
Q. What company?
A. Southern Pacific.
Q. How long?
A. I think he was there about eight years.
Q. Do you remember when?
A. I don't remember exactly; I think it was along about '98 or '99.
Q. Now, you stated that the Southern Pacific endeavored to route their business from the seaboard by the Sunset Route. By the Sunset Route do you mean boat and rail?
A. I mean the Sunset-Gulf.
Q. You call it Sunset-Gulf?
A. Yes.
4850 Q. That means boat and rail, does it?
A. That means boat to New Orleans at that time, and rail west.
Q. How did the Southern Pacific business from the central states move, from Cincinnati and Pittsburg and points west of the Atlantic seaboard zone?
A. That moved, some, through New Orleans; some came to them at El Paso in connection with the Texas, and some at Ogden in connection with the D. & R. G. and the Union Pacific.
Q. Was there a large or small amount of business moving by New Orleans from Ohio, say, and that region?
A. There was quite a large volume of business.
Q. What class of business?
A. All classes.
Q. Who, as a rule, has controlled the routing of the business of the San Francisco merchants, business brought from the east? Is that controlled here by the merchants, or in the east?

A. At that time it was controlled mostly here.

Q. Do you remember of doing any work in preparing a statement of divisions, after the amalgamation of the Southern Pacific and Union Pacific?

A. I do.

Q. What was the work that you did?

A. It was a statement showing the earnings of the lines west of New Orleans versus west of Omaha.

Q. From what was that prepared?

A. From what was known as the Central Freight Association territory, which took in the lines practically west of Pittsburg and east of Chicago and St. Louis.

Q. What was done with that table?

A. That was sent to the different soliciting agents.

4851 Q. Under whose direction was that prepared?

A. Mr. Sproule's.

Q. Will you repeat that, what that table was?

A. It showed the divisions west of New Orleans as compared with the lines west of Omaha.

Q. What was the purpose of preparing that?

A. The purpose was to show by which gateway the greatest revenue would accrue to the Harriman interests.

Q. That is, the whole taken together?

A. Yes.

Q. The Union Pacific and Southern Pacific?

A. Yes; the Union Pacific and Southern Pacific were taken as one—as a unit.

Q. What did you say was done with those figures on that table?

A. They were sent to the soliciting force.

Q. Where?

A. Both on the coast and in the east.

Q. Were any instructions given, after the amalgamation, as to the manner in which traffic should be routed from different parts of the country?

A. There were instructions as to the solicitation of the traffic.

Q. Yes, that is what I mean.

A. Instructions were issued in connection with this sheet to the representatives to endeavor to secure the traffic via the route that would afford the greatest revenue to the Harriman interests.

Q. Now, you say it was sent to the agents at the coast points and in the east. Do you mean the agents of the Southern Pacific or of both lines?

A. Well, shortly after the amalgamation the agents in the eastern territory were the same.

Q. Well, they were in some places. What about New York?

4852 A. The solicitation there was Sunset-Gulf always.

Q. Now, how did those figures actually work out, in securing this result of the highest revenue for the Harriman lines? How about northern Ohio and Chicago, Indianapolis, St. Louis, and such towns?

Mr. LOVETT. I think we ought to have the statement. It is a long time ago that the witness made up those figures and I would not care to trust his memory about them.

Mr. SEVERANCE. Will you try to get a copy of the figures?

Mr. LOVETT. I don't know that I can get it.

Mr. SEVERANCE. Of course it is in your possession: it is not in ours.

Mr. LOVETT. It has not been quite established yet that they are in our possession.

Mr. SEVERANCE. I suppose in San Francisco everything has been burned up, but I will ask you to try Fresno and Los Angeles and these other towns here and see if you can get it.

Mr. LOVETT. I will see if I can get it. I haven't the slightest objection to the evidence, but I want it accurate: that is the only thing.

Mr. SEVERANCE. You might get it at Oakland. Do they keep separate——

Mr. LOVETT. I don't suppose it would be there. There is no soliciting there.

Mr. SEVERANCE. It might not be burned up.

Mr. DUNNE. We will look it up for you.

Mr. LOVETT. I would rather get it.

Mr. SEVERANCE. Yes. I would rather you would: of course
4853 I would be very glad to have it.

Mr. LOVETT. I haven't any objection to the testimony, except I want to get the figures accurately.

Mr. SEVERANCE. Suppose we let him testify to his best recollection, and then if you get it we will put it in, of course.

Q. Go ahead, Mr. Toll.

A. My best recollection is that from the Ohio River points, Cincinnati and Louisville proper, the greater revenue was afforded by the New Orleans gateway, and north of the Ohio River there was greater revenue via Omaha. That is my recollection of it.

Q. Do you remember how the situation was in those days with reference to the solicitation of business to Portland, between the O. R. & N. boats and the Southern Pacific—San Francisco to Portland?

A. No, I didn't have much to do with that part of the traffic.

Q. Did you have anything to do with the tariffs that were issued at the time of the rate war between the boat line and the Shasta Route?

A. I remember of seeing the tariff. I didn't have anything to do with the issuance of it, no.

Mr. SEVERANCE. Did you find that tariff, Mr. Dunne?

Mr. LOVETT. We occupied the recess getting lunch.

Mr. DUNNE. We didn't get down to the office at all. This afternoon we will try and get it out for you.

Q. This morning, Mr. Connor testified to a notation on that tariff. Counsel was going to try to find the tariff, and if so that will show for itself. Mr. Connor testified to a certain notation. You were present when he testified?

4854 A. I was.

Q. Have you any recollection of that notation on the tariff?

A. I have; yes, sir.

Q. What was it?

A. It was to the effect that they considered the rates unremunerative and they were forced on them by excessive water competition.

Q. Who dictated that memorandum, do you know?

A. Mr. Sproule.

Q. And what was Mr. Sproule's position at the time?

A. I think at that time he was freight traffic manager. He may have been general freight agent. I don't recall just exactly when the change was made.

Q. What do you know about competition on Montana and Idaho business before the amalgamation?

A. The competition was rather keen in Montana and Idaho.

Q. How did the O. R. & N. move the traffic and how did the Southern Pacific move the traffic?

A. The O. R. & N. from San Francisco moved traffic by boat, from here to Portland, and then through by rail; to points reached by their own line it went rail from Portland. Their connection with the Northern Pacific was at Wallula, and the Great Northern at Spokane.

Q. How did the Southern Pacific move their business?

A. The Southern Pacific moved the business both ways, both by Portland and by Ogden, but the majority of the freight moved by Ogden.

Q. When it moved to Montana points by Portland, how did it proceed from there?

4855 A. It proceeded from there either Northern Pacific or O. R. & N.

Q. Was there any change made in the relation of rates up there into Idaho points, west of Pocatello, after the amalgamation?

A. There was.

Q. What change was made?

A. The rates west of Pocatello were materially advanced from San Francisco.

Q. From San Francisco?

A. Yes, sir.

Q. Over which line?

A. Over the Southern Pacific and the Oregon Short Line.

Q. Were they changed on the O. R. & N.?

A. From Portland?

Q. Yes.

A. I believe not. I think the rates from Portland remained as they were.

Q. Now, at the time the tariff was issued that contained this notation you speak of, what was the tariff rate that was put in by the Southern Pacific between here and Portland?

A. I think it was 12½ cents a hundred pounds.

Q. Do you remember any commodity rates they had in besides that?

A. They had a commodity rate on sugar, I think, and possibly one on salt. There were very few commodity rates.

Q. Previous to the amalgamation, do you know whether the Union Pacific had a claim bureau, for the settlement of claims?

A. Their claims at that time were handled through the general agent.

Q. Through the general agent of what road?

A. Of the Union Pacific.

Q. Do you know how Union Pacific claims are now handled, through what agency?

A. No, I do not.

4856 Q. You don't know whether they are still handled through the general agent or not?

A. I do not.

Cross-examination by Mr. DUNNE:

Q. Mr. Toll, in respect to this Montana business: by what routes did freight pass from San Francisco to the Montana points, where the Southern Pacific was the initial carrier?

A. Most of it or the favorite route was through Ogden and the Oregon Short Line, but they did move freight over the Southern Pacific to Portland and then over the O. R. & N. and Great Northern and also over the Northern Pacific.

Q. The substantial part of the business moved by Ogden, did it not?

A. Yes, sir.

Q. Why?

A. I believe that the service was better that way and the distance was shorter.

Q. Have you any knowledge, any accurate knowledge, as to the volume of that business moving over the Southern Pacific Company as the initial carrier and having destination in Montana points, that moved via Portland and the O. R. & N.?

A. I have not.

Q. Have you any accurate information as to the volume of that business which moved by way of Portland and over the Northern Pacific, the Southern Pacific being the initial carrier?

A. I have not.

Q. When did you prepare this tabulation in respect to revenue from Central Freight Association points?

A. As nearly as I can recollect it was in 1901.

Q. In 1901?

A. Yes, 1901 or 1902.

4857 Q. Prior to that time, in respect to Atlantic seaboard business, to what route had the solicitation of the Southern Pacific agents been directed?

A. From Atlantic seaboard?

Q. Yes.

A. They were instructed to secure that business via Sunset-Gulf.

Q. That is, prior to the time when you prepared this tabulation?

A. Yes.

Q. Since you prepared the tabulation, how was the solicitation of the Southern Pacific agents directed in respect to Atlantic seaboard business?

A. Sunset-Gulf.

Q. Then, those conditions have been unchanged prior and subsequent to 1901?

A. Yes, sir.

Q. Now, with reference to Central Freight Association territory. You seem to have taken the Ohio River as a sort of dividing line and to have referred to points north of the river and points south of the river.

A. Yes, sir.

Q. Prior to 1901, and with reference to Central Freight Association business originating north of the Ohio River, through what gateway did the bulk of that business move?

A. I think the major portion of it moved through the Ogden gateway.

Q. And so far as that business moving through the Ogden gateway is concerned, in favor of what gateway or route was Southern Pacific solicitation employed, if you know?

A. Through the Ogden gateway?

Q. Yes.

A. Well, I think they were, if anything, neutral.

Q. Why?

A. They were not in a position to jeopardize the interests by
4858 taking sides with any one of their connections there delivering freight.

Q. Will you please make that a little more specific? Just illustrate it a little more concretely than you have done.

A. Well, at that time I don't believe they wanted to antagonize the Denver & Rio Grande by favoring the Union Pacific; nor do I believe they wished to do the other way, vice versa. They wished to work harmoniously with both.

Q. Now, as to business which originated south of the Ohio River, points south of the Ohio River: through what gateway did the bulk of that business pass, having destination at San Francisco?

A. Through the New Orleans and El Paso gateways.

Q. Why was that?

A. Well, the lines serving that territory had their long haul into New Orleans.

Q. Among those lines, for instance, would be what line?

A. The Louisville & Nashville and the Queen & Crescent Route; they were the principal lines at that time.

Q. How did it happen that those lines drew the business down to New Orleans instead of that same business being drawn through a northern gateway?

A. Because most of that business was tributary to their rails, and they in that measure controlled the routing of it.

Q. In other words, they were in a position to force the business that way, weren't they?

A. Yes, sir.

Q. That was the natural commercial gravitation of the business, was it?

A. Yes, sir.

Q. And then, since you prepared this tabulation, you say instructions were given to the Southern Pacific solicitors to employ
4859 solicitation in favor of certain directions. With respect to this business that originated south of the Ohio River, did the instructions to the Southern Pacific agents direct them to follow what you say was the line of natural commercial gravitation?

A. They did.

Q. The conditions, then, as to the movement of that freight north and south of the Ohio River are substantially unchanged, were they not, prior and subsequent to 1901?

A. With the exception that the New Orleans gateway did handle a portion of the traffic from points north of the Ohio River.

Q. But, as I understand you, the substance of that traffic went through the northern gateway?

A. Yes, sir; the larger portion of it went through the northern gateways.

Q. And that was the natural condition, was it not?

A. Yes, sir.

Mr. DUNNE. I think until we see that statement that will be all I care to ask you, unless Judge Lovett desires to ask you some questions.

Mr. LOVETT. No, that is all.

By Mr. SEVERANCE:

Q. As to this traffic from the Atlantic seaboard, previous to the amalgamation of the lines, did the Union Pacific solicit it?

A. Did they solicit Atlantic seaboard business?

Q. Yes.

A. Yes, sir.

Q. Actively?

A. Actively; yes, sir.

Q. Here in San Francisco?

A. Yes, sir.

Q. Tried to move it what way?

A. Tried to move it all-rail route, because all-rail would bring it into Chicago.

Q. They got all they could, did they?

A. Yes, sir; as far as I know.

4860 Q. In competition with the Southern Pacific?

A. Yes, sir.

Q. And as to business from Cincinnati and points south of the Ohio River, didn't some of that business move Union Pacific?

A. Very little of the business south moved Union Pacific. As I understand, they didn't make much effort to secure that business except in territory contiguous to St. Louis. They may have gone down into Kentucky for whiskey shipments, a short distance south, but they did not reach very far.

Q. Now take St. Louis. How did business move here from St. Louis? How was it solicited here by the Southern Pacific from St. Louis?

A. By New Orleans.

Q. And how was it solicited here by the Union Pacific from St. Louis?

A. By Ogden from Omaha.

Q. Did the solicitation of these respective lines influence the movement of traffic?

A. Yes, sir, I hope so.

Q. That was what it was for, wasn't it?

A. Yes, sir.

Q. I didn't know from my friend Mr. Dunne's questions whether it amounted to anything, whether the conditions remained just the same. Did you mean to testify in answer to Mr. Dunne that there was no difference in the movement of traffic by reason of the elimination of this competition?

A. Well, as I explained to him, I thought there was a slight difference in the freight from Central Freight Association territory, and a larger portion now comes through the Omaha gateway, whereas it was actively solicited before through the New Orleans gateway.

4861 Q. What is the Central Freight Association territory?

A. The Central Freight Association territory is territory lying east of Chicago and East St. Louis and west of Buffalo and Pittsburg and north of the Ohio River.

Q. You stated, as I understood you, that the Southern Pacific got the larger part of the business from seaboard territory.

A. Yes, sir.

Q. Before and since?

A. Yes, sir.

Q. That is true, is it?

A. Yes, sir.

Q. And you spoke of certain business originating along the line of the Louisville & Nashville and the Queen & Crescent, which was taken down to New Orleans through the influence of those lines.

A. Yes, sir.

Q. Was that business originating along those lines, the subject of solicitation here by the Southern Pacific agency?

A. Yes, sir.

Q. And was it in part at least routed here?

A. The consignees controlled the routing in very many instances, yes, sir.

Q. Where the consignees controlled the routing was it respected? Was their routing respected?

A. Generally, yes, sir.

Q. So that it was not entirely in the control of those initial lines? The consignee fixed the route?

A. In a great many instances, yes, sir.

By Mr. DUNNE:

Q. Did your tabulation show that in respect to these points south of the Ohio river a larger revenue was derivable by the
4862 Union Pacific-Southern Pacific system where the haul was by the southern route?

A. Yes, sir.

Q. Now, with respect to solicitation by the Union Pacific of business originating on the Atlantic seaboard. You say that the Union Pacific did solicit that business?

A. Yes, sir.

Q. Have you any personal knowledge as to the extent and character of that solicitation? Did you ever personally engage in it?

A. I never personally engaged in solicitation, no, sir.

Q. Well, if we assume hypothetically, Mr. Toll, that there was solicitation by the Union Pacific and that that solicitation has been eliminated, are there still any competitors in that field, and have there been since 1901, for the Sunset Route in respect to that business?

A. There certainly have.

Q. Who are they?

A. Practically every line running west that does not belong to the seaboard is a competitor. The Santa Fe is a competitor; the Rock Island and all the Iowa lines are competitors for that traffic, and all the Western Association lines are competitors.

Q. And how about the trunk lines?

A. The trunk lines from far east are competitors; from the Middle they are not so much so for the reason that their revenue into New York is about the same as if it came west.

Q. Ever since 1901 there has been an extensive, active, powerful, and keen competition by the all-rail lines against the Sunset-Gulf for that very business, has there not?

4863 A. Yes, sir.

Q. In other words, that business has not ceased to be competitive because of the so-called elimination of the Union Pacific, has it?

A. No, sir.

Q. Now, assuming, provisionally, that the Union Pacific was a factor in the competitive struggle prior to 1901, any business resulting to the Union Pacific from its competitive efforts would be business enjoyed also by the Southern Pacific, would it not?

A. From Ogden west, yes, sir.

Q. Now, the Union Pacific in competing for that business would do so at a price, would it not?

A. Yes.

Mr. SEVERANCE. What does that mean?

Q. Could the Union Pacific make a price or a rate for that transportation without the consent of the Southern Pacific?

A. They could not.

By Mr. SEVERANCE:

Q. The transcontinental rates, about which Mr. Dunne has just been asking you, were made in transcontinental meetings, weren't they?

A. They were.

Q. In which all the lines were represented?

A. But the Southern Pacific was a dominating factor.

Q. You considered the Southern Pacific a dominating factor?

A. Yes, sir.

Q. Stronger than the Santa Fe?

A. Yes, sir.

Q. You were a Southern Pacific man, weren't you?

A. Yes, sir.

Q. For instance, the Southern Pacific could make a rate to
4864 Cincinnati, could it, without the concurrance of its connection?

A. Yes, sir.

Q. How?

A. They had concurrence from their connections to make any rates.

Q. Yes, I say they had to have concurrence.

A. They didn't have to have specific concurrence. What I mean is, they had general concurrence from other lines to make rates, down to a certain mimimum.

Q. That was by agreement?

A. Yes.

Q. In the absence of agreement with the Southern Pacific, other lines reaching points like Cincinnati, Detroit, Cleveland, and Pittsburg could not make a rate?

A. No, sir, they could not.

Q. So the fact that the Southern Pacific had to concur in the rates from the east, by the Union Pacific, from here to Ogden, did not make them at all singular among railroads? All the railroads between two points, where there are connections, have to concur in the rates, don't they?

A. Yes, each line has to concur in the rate, to operate over its road.

Q. Now, in these transcontinental meetings the Union Pacific was represented, wasn't it?

A. Yes, sir.

Q. Rather a lively citizen, wasn't it?

A. Yes, sir.

Q. And to get from Ogden to Omaha, the lines leading between those points had to agree with the Southern Pacific, hadn't they?

A. Yes, sir.

Q. So it worked both ways?

A. It worked a little more strongly the other way. There was only one line west of Ogden and several between Ogden and the Missouri River.

Q. That is true. Either the Rio Grande or the Union Pacific had to agree on the rates from Ogden to the Missouri River,
4865 hadn't they?

A. They had, yes, sir.

Q. Otherwise the traffic wouldn't move?

A. Yes, sir.

Q. And the advantage which the Southern Pacific had was that it was the single line between Ogden and San Francisco?

A. Yes, sir.

Q. While there were two lines leading east from Ogden?

A. That is true.

Q. Now, in business into Portland, what lines concurred in that, from the east?

A. The Southern Pacific also had a voice in that, and the O. R. & N.

Q. The O. R. & N. had a voice?

A. The Northern Pacific and the Great Northern.

Q. Did the Northern Pacific have a voice in it?

A. Yes.

Q. Did the Great Northern have a voice in it?

A. Yes.

Q. Now, in fixing through rates by El Paso, did the other lines have a voice in making those rates?

A. Yes, sir.

Q. Lines like the Texas & Pacific?

A. Yes.

Q. During the time that you were chief clerk here, and while you were in Mr. Sproule's office, who usually attended the transcontinental traffic meetings on behalf of your road?

A. When I first went with the company, at the time I was chief clerk, you mean?

Q. Yes.

A. Mr. Luce.

Q. And previous to that?

A. Previous to that, Mr. Sproule.

Q. What was Mr. Luce's position?

A. General freight agent.

4866 ROBERT G. GRAHAM,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Graham, where do you live?

A. Oakland.

Q. What is your business?

A. Roofing-slate business, general agent.

Q. How long have you been in the slate business?

A. Six or seven years.

Q. Previous to your engaging in the slate business what was your business?

A. Railroad solicitor, freight solicitor.

Q. For what roads?

A. The Southern Pacific, the Sunset, the Rio Grandes.

Q. Immediately before retiring from the railroad service what company were you with?

A. The Rio Grande.

Q. And for how long?

A. I think about three years or four years.

Q. Do you remember what years?

A. I can't recall the years; perhaps it would be 1898 to 1902, or thereabouts.

Q. And previous to that were you in the Southern Pacific?

A. The Southern Pacific, yes.

Q. How long and in what capacity did you serve the Southern Pacific?

A. About six years as freight solicitor for the Sunset Route and about five years as assistant at Market Street, San Francisco.

Q. When you were freight solicitor, you say you were freight solicitor for the Sunset?

A. Yes, sir.

4867 Q. What class of traffic did you solicit for the Sunset Route of the Southern Pacific? Originating where?

A. Freight traffic originating in New York, general freight business; east-bound from California points to New York territory.

Q. What California points? How far out of the city here? Common points, do you mean?

A. Oh, yes, common points; go out anywhere, throughout the state.

Q. Did you have anything to do with the solicitation of traffic like wool from Nevada?

A. No.

Q. Your business was chiefly in the city of San Francisco?

A. Mostly in the city of San Francisco, yes.

Q. From whom did you solicit this business, from what class of people?

A. Merchants, dealers.

Q. Wholesalers?

A. Wholesalers mostly.

Q. And what class of commodities were covered by that solicitation?

A. Oh, I guess all classes of merchandise from New York, manufactured merchandise.

Q. Did that solicitation cover traffic originating at points west of New York?

A. What we call New York territory, yes; as far west as Pittsburg, perhaps.

Q. And New England?

A. And New England.

Q. Did you solicit exclusively by that route?

A. Oh, no. We would solicit over the Sunset territory all-rail, Cincinnati and south of the Ohio River.

Q. And how did that traffic move—by New Orleans?

A. By New Orleans, if we could get it, yes.

Q. And from what points? Cincinnati and south of the
4868 river, did you say?

A. I can't name the points now. We hauled whiskey from Louisville, you know; manufactures from Detroit.

Q. By way of New Orleans?

A. Yes. Cincinnati.

Q. Did you ever work any business, so far as you can recall, from Chicago for that route?

A. Never. Chicago and St. Louis were barred. We didn't touch that territory at all.

Q. At the time you were soliciting this business did the Union Pacific have a soliciting agency here?

A. Yes.

Q. Were they soliciting that same class of traffic that you were trying to work by the Sunset Route?

A. Yes.

Q. How—actively or otherwise?

A. Actively.

Q. What was your strongest competitor in here on that business that you were trying to work by the Sunset Route? What was the most active band of solicitors?

A. I think the Santa Fe.

Q. And next to them, what would you say?

A. Well, I can't tell you. The central lines did most of that—the Milwaukee and the Texas & Pacific, a bunch like that. I have forgotten now, it has gone from my memory; it is too long, most.

Q. By the central lines, you mean the lines terminating at Omaha and Kansas City?

A. Yes.

Q. Do you remember how large a soliciting agency the Union Pacific had here at that time?

A. Three or four men, I think, on the street.

Q. And what classes of traffic were they trying to work over the Union Pacific for San Francisco?

A. Oh, about the same class of traffic as we were after.

4869 Q. Did you meet with the competition of the Panama route on business from the seaboard?

A. I can't recall much of that. We never paid much attention to steamer business outside of our own.

Q. You didn't meet the Pacific Mail or Panama Railroad solicitors, as far as you remember?

A. No.

Cross-examination by Mr. LOVETT:

Q. You understood that whatever business the Union Pacific solicitors secured for California passed over the Southern Pacific from Ogden to San Francisco, didn't you?

A. Yes.

4870 H. W. ADAMS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Adams, where do you live?

A. Sacramento.

Q. And what is your business?

A. I am traffic manager for the Pioneer Fruit Company.

Q. How long have you been in that business?

A. One year; one year last month.

Q. Previous to that what was your business?

A. Commercial agent for the Rock Island-Frisco system.

Q. Whereabouts?

A. San Francisco.

Q. For how many years?

A. Since 1891.

Q. Up to a year ago?

A. Up to a year ago, yes, sir.

Q. What was your business here as commercial agent—soliciting traffic?

A. Soliciting traffic, yes, sir.

Q. Exclusively?

A. Exclusively.

Q. Were you acquainted with the soliciting agencies of the different roads in town here during those years?

A. Located on the coast, yes, sir.

Q. I mean the agencies represented here at the time.

A. Yes.

Q. Do you recall the soliciting force of the Southern Pacific previous to the year 1901, that is, who the men were—the soliciting force

of the Southern Pacific, previous to 1901, who were working on transcontinental business?

A. I don't believe that I could give you it accurately.
4871 Mr. G. W. Fletcher was in charge of the office. I think he had on the street for him at that time Robert Graham, Harry Collins, and I think young Stubbs was on the street for him.

Q. Is that Mr. J. C. Stubbs' son?

A. No, I think he is a nephew. I wouldn't say for sure though as to the relationship that exists.

Q. Is that all that you remember?

A. That is all I can recall; there were one or two others.

Q. Do you recall the names of the gentlemen who at that time represented the Union Pacific in the same capacity?

A. As soliciting agents?

Q. Yes, sir.

A. There was Mr. Inglis; I am not sure whether Mr. McEwing was with them at that time or not. I think there was a Mr. Suydam with them at that time also.

Q. Now, what was your work? You say you were soliciting traffic.

A. I had charge of the traffic interests with certain solicitors, a number of solicitors under me, soliciting both east-bound and west-bound traffic.

Q. And where you could get it over the Rock Island system?

A. Providing we could get it over the Rock Island. That was the purpose of the solicitation.

Q. Now, what did you find at that time was the effort on the part of the Southern Pacific in moving business here from the seaboard?

A. They were working Sunset-Gulf seaboard at that time.

Q. Did they work by the Sunset Route for any other territory outside of the seaboard territory?

A. They worked south of the Ohio River, Cincinnati and
4872 Louisville and those points; that is, I should say, not Sunset-Gulf but by New Orleans.

Q. Not Sunset-Gulf but Sunset by New Orleans?

A. By New Orleans.

Q. Did they work any point north of Cincinnati in Ohio?

A. From my observation, they did not aim to do so actively. Of course there was some business that they would get from points north.

Q. What class of business?

A. Occasionally there would be a car of some merchandise go that way, that probably was not solicited by them; simply routed that way by the influence of some one, probably the shipper, perhaps the consignee.

Q. What was your experience during that time as to where most of the shipments from the East to San Francisco points was routed? Were they routed locally here by the consignees, or routed in the east?

A. Some shipments were routed here by the purchaser, and some by the shipper.

Q. What would you say as to the majority of the shipments?

A. The majority were controlled here on the coast by the purchaser.

Q. How far east did the San Francisco merchants reach with their jobbing business, during this time?

A. That is a question I could not answer, as to how far east they went with their jobbing business out of San Francisco.

Q. You didn't know about that?

A. I didn't know about that, no, sir; it is something that I wasn't interested in.

Q. Now, what did you know as to the activity of the Union Pacific soliciting agency, previous to 1901, in routing business from points east of the Missouri River to San Francisco?

4873 A. We found them from some territories an awful strong competitor.

Q. What territory?

A. Take from Chicago, take from points east of Chicago.

Q. Points east of Chicago?

A. Take from points east, take Buffalo and up through Michigan—a very strong competitor.

Q. How was it on business from Cincinnati and that region?

A. While they solicited that business, I don't believe they were getting a very large share of it, any more than we were.

Q. What percent of the business would you say moved from the seaboard territory all-rail?

A. I should say a very small percentage of it; I couldn't say accurately just what percentage, but I should say a very small. That is, exclusive of the Santa Fe. The Santa Fe got a good deal of seaboard business all-rail.

Q. Didn't the Sunset Route get perhaps 80 per cent of it all together?

A. Not having access to the figures I couldn't say.

Q. You couldn't give an opinion as to that?

A. I couldn't give an opinion.

Q. What difference did you observe in the activity of the respective solicitation of the Union Pacific and the Southern Pacific in common territory, after their amalgamation?

A. Well, I didn't note any great difference so far as the solicitation was concerned. They were all active after business.

Q. All the time?

A. All the time.

Q. Always have been?

4874 A. Always have been; would take business from any point that they could get it.

Q. Did you find the Southern Pacific endeavoring to work business out of Cincinnati after that time?

A. Certainly; they were soliciting the business from that point.

Q. Did it move in the same volume?
A. Yes, sir.
Q. From Cincinnati to the coast by the New Orleans route?
A. They were getting the major portion of the business through the New Orleans gateway.
Q. Still are? Up to 1908, I mean. I am speaking after 1901.
A. Oh, after 1901?
Q. Yes, after 1901.
A. Well, they are still soliciting that business from the Cincinnati territory by the New Orleans gateway.
Q. Do you know whether it is moving that way in the same volume that it did formerly?
A. That I couldn't say.
Q. You don't know about that?
A. No.
Q. Was the Union Pacific soliciting that business?
A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. Over what lines did the Rock Island-Frisco system work their business to California, Mr. Adams?
A. Well, we had various gateways. We worked through the Missouri River gateway, through the different Colorado gateways. After the El Paso route was completed, we worked in connection with the E. P. & S. W. through El Paso; we worked in connection with the Texas & Pacific by Fort Worth, Texas.
Q. Practically all of the California business controlled by
4875 the Rock Island reaches its destination, ultimately, over the Southern Pacific, doesn't it?
A. Ultimately over the Southern Pacific.
Q. Either by way of Ogden or El Paso?
A. Yes, sir.
Q. You had two lines, I believe—one to the westward, to Denver, and the other southwesterly to El Paso?
A. Yes, sir.
Q. When was the El Paso route of the Rock Island opened, do you remember?
A. I don't recall the date.
Q. Something like ten years ago, wasn't it?
A. In that neighborhood; ten or twelve years ago.
Q. What was your policy in respect to routing California business as between those two gateways?
A. Business for the northern section we worked through the northern gateway; business for the southern portion of the state, Los Angeles, through the southern gateway, on account of service.
Q. Did you seek generally to get the long haul, that is, the most revenue, wherever the service conditions would allow?
A. We certainly did.
Q. That is the general rule of railroad solicitors?

A. That is the general rule. Revenue is what counts.

Q. Did you work any business into California with the Atchison?

A. A very small percentage—a very small portion.

Q. Your natural outlet was by way of the Southern Pacific via Ogden or via El Paso?

A. Yes, sir.

Q. Because you would get a longer haul than if you worked with the Atchison?

A. Yes, sir, we got the longer haul in connection with the Southern Pacific.

4876 Q. Virtually all the competition for California business between the rail lines, outside of that between the Southern Pacific and the Atchison, is between connections of the Southern Pacific east of Ogden and El Paso, isn't it?

A. Yes, sir; it is competitive with all those lines.

Q. The Union Pacific, the Denver & Rio Grande, the Rock Island, the Burlington and the Missouri Pacific, for example, are actively competing with each other for that business east of Ogden and all turning it over to the Southern Pacific at Ogden, are they not?

A. Yes, sir; that is, the Denver & Rio Grande and its connections?

Q. Yes.

A. Yes, sir.

Q. And the Union Pacific and its connections?

A. Yes, sir.

Q. So, at El Paso, the Texas & Pacific and the Rock Island and their connections in the east are competing for business by way of El Paso also?

A. Yes, sir.

Q. And turning it over to the Southern Pacific at El Paso? That is true, is it not?

A. Yes, sir.

By Mr. SEVERANCE:

Q. And you are all competing—that is, your company and the Union Pacific and others were competing with the Sunset Route by New Orleans and the Sunset and Gulf route, weren't you?

A. Yes, sir, we were competing with each other in the solicitation of the business; we were all competitors.

Q. That included the Union Pacific, the Southern Pacific, Sunset-Gulf, the Rock Island, the Rio Grande—all of them?

A. The Union Pacific was a competitor of the Rock Island, and the Rio Grande and its connections outside of the Rock Island
4877 were competitors of ours; the same way with the Sunset-Gulf route—it was a competitor of ours.

Q. And each one of those roads you have named was a competitor of the other?

A. Yes, sir.

By Mr. LOVETT:

Q. You have two lines, I believe you stated, by which you could work business to and from California—one by way of El Paso and one by way of Ogden?

A. Yes, sir.

Q. And such business as you controlled here you would send either way—by El Paso or Ogden?

A. Business for the northern section of California was sent through the Ogden gateway, and for Southern California it was worked through the El Paso gateway, the service being better, and the revenue of course was better to us.

Q. Your system in that respect was something like the Southern Pacific. You had two different gateways. Except that the Southern Pacific had a very much longer haul by the Sunset than it could get by way of Ogden?

A. Yes.

Q. And so far as the Southern Pacific's attitude toward this transcontinental business was concerned, it was largely a question of division or most revenue, wasn't it?

A. It was certainly a question of divisions with them, the same as it was with us. It was a question of getting the longest haul we possibly could.

By Mr. DUNNE:

Q. You say you are in the fruit business?

A. I am in the fruit business; yes, sir.

Q. Do you recall that there was a blanket rate on oranges from California points to Missouri River points and all points
4878 east as far as the Atlantic seaboard; that it used to be $1.25 per hundred pounds and was afterwards made $1.15? Do you recall that?

A. Yes, sir.

Q. Some of those oranges moved, did they not, from California points of origin through the El Paso gateway and by the Rock Island east to Kansas City and Chicago, and thence on to Atlantic seaboard points?

A. Yes, sir.

Q. Some of those oranges also moved, did they not, from California points of origin through the Ogden gateway and over the Union Pacific to Chicago and thence to Atlantic seaboard points?

A. Yes, sir.

Q. The Southern Pacific made the rate, did it not, north and south?

A. That is, the same rate?

Q. Yes.

A. Yes, sir.

By Mr. SEVERANCE:

Q. You were saying that with the Southern Pacific, as with the Rock Island, it was a question of divisions?

A. Yes, or earnings; that is, getting the whole 100 per cent or a portion of it.

Q. If the business was routed Sunset-Gulf they got 100 per cent; if it was routed by Ogden they got their division? That is what you meant, is it not?

A. Yes, sir, that is what I meant.

Q. But if the Southern Pacific was successful in getting that business Sunset-Gulf, the Union Pacific did not get any of that 100 per cent, did they?

A. No, sir.

Q. So, the interest of the Union Pacific was diametrically op-
4879 posed to the Sunset-Gulf route, because it did not share in it?

A. Oh, they would not share in the earnings of business moving Sunset-Gulf.

Q. And the Union Pacific was not any different from the Southern Pacific, was it,—it was after earnings also?

A. I presume they were.

Q. They had to have earnings to buy other railroads.

Mr. LOVETT. No, we issued securities.

By Mr. LOVETT:

Q. You understood that the Union Pacific could not make any rate to or from California without the consent of the Southern Pacific, didn't you, Mr. Adams?

A. I don't believe I could answer that question, not having the information at hand as to how the rates were made. I was never brought into any conference of that kind in the making up of the rates.

Q. Aren't you familiar with rate-making to such an extent as to be able to say whether or not under the Interstate Commerce Act the concurrence of two lines is necessary where a joint rate is made?

A. Oh, it is absolutely necessary to have their concurrence.

Q. That is what I mean. The Union Pacific could not make a lawful rate to or from California without the concurrence of the Southern Pacific, could it? Don't you understand that?

A. I understand that, yes, sir,—without the concurrence of the lines interested in the rate.

Q. Whereas the Southern Pacific could make rates to the Missouri River and east of the Missouri River without the concurrence of the Union Pacific, couldn't it?

4880 A. The Southern Pacific to the Missouri River without the concurrence of the Union Pacific?

Q. Yes.

A. I don't so understand.

Q. Couldn't they over the Denver & Rio Grande?

A. Not without the Denver & Rio Grande's concurrence in the rate.

Q. That is the point. What I am trying to show is, if I understand the facts correctly, that the Union Pacific rate-making to California was absolutely dependent on the Southern Pacific, whereas the Southern Pacific had other outlets than the Union Pacific; that is to say, the Southern Pacific and the Denver & Rio Grande and the Rock Island, for example, could make rates between the Missouri River and California?

A. My understanding is that you cannot publish the rate without the concurrence of the lines interested.

Q. Yes, but those lines concurring, they can make the rate?

A. They can make the rate.

Q. But that the Union Pacific is merely an intermediate line, isn't it, extending from Omaha to Ogden?

A. Yes, sir.

Q. And the Oregon Short Line running up to Portland. It has no line of its own to California?

A. No; that depended on the Southern Pacific.

By Mr. SEVERANCE:

Q. Now let us see about this matter of rate-making from the Missouri River. It appears by the testimony of witnesses who have been on the stand this morning that a very large traffic moves from here to Portland by boat. You know that is the fact, don't you?

A. I know it to be a fact.

4881 Mr. DUNNE. A large traffic?

Mr. SEVERANCE. Yes, they said larger than you get.

Mr. LOVETT. I think that is a liberal interpretation.

Mr. SEVERANCE. Well, we will say traffic moves, then, if my friends object to the word "large."

Q. You are familiar with the fact that the O. R. & N. maintained a boat line with a five-day service between here and Portland, aren't you?

A. Yes, sir.

Q. Now, the Union Pacific Railroad Company, as is undisputed, has for years owned the Oregon Short Line and the Oregon Railroad & Navigation Company, which latter company in turn owned that boat line. Do you see any reason why the Union Pacific, then, could not make a rate into San Francisco without the concurrence of the Southern Pacific if they were willing to take the traffic by Portland and their boat line? They didn't have to have the consent of the Southern Pacific for that, did they?

A. Well, I don't see any reason why they should not; that is, any reason why they could not make the rate.

Q. Why they could not; that is what I mean. Judge Lovett was seeking to develop the fact that they could not possibly get in here and publish a rate except with the concurrence of the Southern Pacific.

Mr. LOVETT. No——

Q. They could publish it over that way, over their own rails and boat from Portland to San Francisco?

A. My answer to that question was that if the rate applies over another line, that line would have to concur in the rate.

Q. Possibly you did not apprehend as well as I did. I
4882 have been traveling around for some time and know just the point he was trying to make, and I am trying to show he is a little mistaken in his premises. Now, you see no reason why the Union Pacific could not make a through rate to the Missouri River from here, do you, by boat-line and rail?

A. Personally I don't know of any reason, if they own the boat line.

Q. If they own the boat line, yes. It would not be a situation very unlike the Sunset-Gulf route: that is boat and rail, isn't it, from New York?

A. Yes.

Q. And still they don't have to ask anybody's consent to make that rate. They are in about the same fix, aren't they, except one of them reaches New York and the other the Missouri River?

A. That is true.

By Mr. DUNNE:

Q. Have you ever made any comparison, based on accurate data, as to service, time and other concomitants of railroad traffic between the boat line New York to New Orleans, thence to California, and the rail line Union Pacific to Portland and boat line down to San Francisco?

A. No, sir, I have never made any.

Q. Now let me ask you this question. Suppose there was a rail line from Chicago to San Francisco. Let us take as direct a rail line as we can get: the Northwestern from Chicago to Omaha, the Union Pacific from Omaha to Ogden, and the Southern Pacific from Ogden to San Francisco. You are very familiar with that route?

A Yes, sir.

Q. Now, suppose there was another route, the route that Mr.
4883 Severance speaks of: the Northwestern, again, to Omaha, the Union Pacific from Omaha to Ogden, and the Union Pacific from Ogden to Portland, with a boat line down to San Francisco; and suppose those two lines were competing for San Francisco business, and that was all the business they had to keep them alive: how long do you think that roundabout road by Portland and the water would last against the all-rail line?

A. If they were dependent upon my business they wouldn't last.

By Mr. LOVETT:

Q. You never heard of any business moving from California to points east of the Missouri River by way of the Union Pacific and Portland and the boat line from San Francisco to Portland, did you, Mr. Adams?

A. I don't recall ever having heard of any.

Q. During all the time you were engaged in working this transcontinental business you never knew any to move that way, did you?

A. I can't recall of any.

Mr. LOVETT. I have asked every witness on the stand so far, I believe, that question——

Mr. SEVERANCE. We have found some.

Mr. LOVETT. —— but never found one who knew of it except one witness at Portland, and it turned out finally that the amount he knew to move that way was on account of cars that they could not bring through the snow-sheds and tunnels on the Southern Pacific.

Mr. SEVERANCE. It was on account of the inefficient line that the Southern Pacific maintained over there.

4884 By Mr. SEVERANCE:

Q. You were here, engaged in the solicitation of traffic, during the ten years or so that the Canadian Pacific had a differential into San Francisco, or a portion of the time. That ended in 1898.

A. I commenced here on the coast in 1891.

Q. Do you remember the fact that for years there was a differential maintained by the Canadian Pacific on San Francisco business from the east?

A. Yes, sir.

Q. And you know, don't you, that a large amount of traffic moved that way?

A. They did get some traffic, but I couldn't say just whether it was a large amount or a small amount.

Q. You know traffic moved that way?

A. The traffic did move that way.

Q. That line is from New York City a much longer line than a line by Portland, isn't it?

A. I should judge that it would be.

Q. And when my friend Mr. Dunne asked you as to the respective merits of these two lines, I assume that he was asking as to the merits on an equality of rates. Assuming, for purposes of active competition, or to get proper treatment from the Southern Pacific, or any reason that might actuate the Union Pacific, they were to put in a rate below the all-rail rate, by Portland, don't you think they would attract business that way, just as the Canadian Pacific did when it had its differential?

A. They probably would attract a certain class of business.

Q. Wouldn't the natural effect of reducing rates via Port-
4885 land be to put down rates all along the line?

A. It naturally would have that effect.

Mr. SEVERANCE. That is what Mr. Stubbs said.

By Mr. LOVETT:

Q. After the Canadian Pacific's differential was abolished, it practically withdrew from the business, didn't it, Mr. Adams?

A. Practically.

Q. The Canadian Pacific has no line south of the Canadian border, has it?

A. Not that I know of.

Q. Its lines are all in Canada. The Union Pacific has a line from Omaha to Ogden and there it connects with the Central Pacific. If it were to attempt to use the boat line and take the business to Portland, it would be almost as far from San Francisco when it arrived at Portland as at Ogden, wouldn't it?

A. Let us see—what is that question?

Q. I will ask it over again. About what is the distance from San Francisco to Ogden, do you know?

A. Approximately about 830 odd miles.

Q. And from San Francisco to Portland?

A. In the neighborhood of 800 miles, I should say.

Q. Do you happen to know about the distance from Ogden to Portland?

A. I might make a rough guess at it.

Q. It is between 700 and 800 miles, isn't it?

A. I should say about 800 miles.

Q. Now, the question was this: If the Union Pacific should attempt to work business by way of Portland and the boat line to San Francisco, it would in hauling that business to Portland be almost
1886 as far from San Francisco as it would be at Ogden. That question is practically answered by the statement of the distance?

A. Yes.

Q. Now, don't you think, Mr. Adams, from your experience in the handling of this transcontinental freight, that it would be rather suicidal for the Union Pacific to attempt to work against the Southern Pacific the boat line by way of Portland to San Francisco?

Mr. SEVERANCE. I object to that as purely speculative.

A. I don't see where there would be anything gained by their doing it. It would be a longer route, unless there was some special rate that way which made it an object for the shippers.

Q. You were asked on direct-examination about what the Union Pacific might do by making a lower rate to San Francisco by way of Portland and the boat line. If the Union Pacific should attempt to do that (assuming that the Union Pacific and Southern Pacific are independent), wouldn't it be a very suicidal policy for the Union Pacific, judging from your knowledge of the situation?

A. It would be apt to bring about a demoralized condition.

Q. Couldn't the Southern Pacific retaliate against the Union Pacific then by diverting its unrouted traffic to the Denver & Rio Grande at Ogden?

A. I presume they could if they saw fit to do so—any business that they might control themselves.

Q. Wouldn't that be a natural thing for them to do if such a condition should arise?

A. I presume it would be.

Q. And wouldn't the injury in that case be very much greater to the Union Pacific than there would be benefit by working the Portland line?

A. In my opinion it would be.

4887 By Mr. SEVERANCE:

Q. Speaking of inflicting injury on the other line; if so large a percentage of the eastern traffic moved to San Francisco by the Sunset Route, which is owned exclusively by the Southern Pacific; and if, as you stated in answer to my former question, putting down the rates by Portland put them down all along the line, the Union Pacific then would be in a position to make the Southern Pacific suffer if they cut down the rates so as to affect the rates on the Sunset, which carries bulky traffic?

A. Yes; but at the same time the question of service would also enter into the transaction.

Q. That is undoubtedly true; but, of course, if they got into a demoralized condition, if they got to fighting over some alleged unfairness on one side or the other, each company would be in a position to hurt the other very much, wouldn't it?

A. Most decidedly.

Q. So that it would be a foolish thing for them to do, from the standpoint of their revenues?

A. Yes, sir.

Q. Speaking of the length of the line; the Sunset-Gulf route from New York is very much longer than the all-rail line, isn't it?

A. I should say yes.

Q. Still, the bulk of the traffic goes that way, or the majority of the traffic?

A. Yes, because they give the service that way.

Q. Because they give the service?

A. Yes; get the service.

Q. So, what the Union Pacific would do, if they wanted to work the line from Portland, they would have to give good service?

A. They would have to give the service or equal rates.

4888 Q. It is in testimony here that it only takes two days and a half to come to San Francisco by boat from Portland. There isn't any physical reason, is there, why they could not give good service by that route?

A. It would be a question of service into Portland from the east as well.

Q. Now take the service into Portland from the east. If the Union Pacific use their Short Line to Portland, they don't have to climb any mountain ranges, do they?

A. I think they have a few grades to climb.

Q. They have a few grades up there, but they have nothing like the snow-shed country in the Sierras, have they?

A. I hardly think so, although I am not familiar with that end of the line.

Q. You don't know the O. R. & N. line?
A. I don't know the O. R. & N. line very thoroughly.

By Mr. DUNNE:

Q. Mr. Adams, do you recollect when the lines to the coast, the Pacific lines, first conceded that differential to the Canadian line? Do you remember when that was?
A. No, I do not.
Q. Do you know when the lines withdrew their concession of the differential, or that was arrived at as a result of arbitration? Do you remember that year?
A. I don't recall that.
Q. You couldn't fix the time?
A. I couldn't fix the time, no.

H. E. LOOSE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Loose, where do you live?
A. San Jose.
Q. And what is your business?
A. Dried-fruit shipper.
Q. How long have you been shipping fruit from San Jose?
A. Twenty years.
Q. To what points do you ship?
A. All over the United States, all points.
Q. In quite large quantities?
A. Reasonably.
Q. Can you give an idea of how many carloads per year?
A. It depends on the season; crops vary from one season to another.
Q. Can you give an average?
A. I have never made an average.
Q. Can you state a maximum or minimum, or don't you care to state? It doesn't make any special difference.
A. I have shipped 300 and 400 cars a year; some seasons 100 cars.
Q. How does that traffic move?
A. That depends as to the destination.
Q. Well, take Atlantic seaboard business.
A. Principally Sunset; some Santa Fe.
Q. Some Santa Fe?
A. Yes, sir; and some Union Pacific.
Q. How does it reach the Santa Fe tracks from your town? You live in San Jose?
A. Yes, sir. Stockton, I think.
4890 Q. How is that?
A. Yes, sir. Stockton, I think.
Q. And over what line?

A. The Southern Pacific.

Q. And it reaches the Union Pacific over the Southern Pacific?

A. Yes, sir.

Q. And when it goes Sunset how does it move from the end of their rail lines? Moves all-rail, doesn't it?

A. No, sir; Sunset-Gulf by the way of Galveston.

Q. Boat and rail. What classes of fruits do you ship that way?

A. Dried fruits.

Q. You can't ship fresh fruit that way?

A. Don't handle them.

Q. Oh, you only handle dried-fruit?

A. Only dried fruit.

Q. Do you ship any by Ogden and the Denver & Rio Grande?

A. Not of late years to any extent.

Q. Did you ever ship that way?

A. Yes, sir.

Q. How long ago?

A. Oh, ten years ago or thereabouts.

Q. What is the special reason that you have ceased to ship that way?

A. Difficulty to get cars, equipment.

Q. When did that difficulty arise?

A. Well, I couldn't say exactly.

Q. In reference to the time when it became publicly known that the Union Pacific and Southern Pacific were under common control, fixing it with reference to that date: was it before or after that date that you had trouble in getting D. & R. G. cars?

A. After that date principally.

Q. Were you ever advised by the Southern Pacific people of any rule concerning the movement of their cars by any line other than the Union Pacific from Ogden east?

4891 A. Unless I wanted to have my fruit transferred, I could not get the equipment, if it was not available.

Q. Unless you wanted to have your fruit transferred from one car to another?

A. Yes, sir.

Q. That is, if it was loaded in a Southern Pacific car or in a Harriman line car, you could not move it beyond Ogden without transferring it?

A. No, sir.

Q. Unless you moved it over the Union Pacific; is that what you mean?

A. Yes, sir.

Q. Do you remember whether, previous to the amalgamation of these lines, your traffic was solicited by the Union Pacific and Southern Pacific agencies separately?

A. Yes, sir.

Q. Which way did the Southern Pacific endeavor to move that traffic to the east?

A. To Atlantic coast points, Sunset.
Q. How about Pittsburg, Cincinnati and Louisville?
A. All rail; they also worked for that business.
Q. Which way—by the Sunset?
A. By the way of New Orleans.
Q. And how did the Union Pacific endeavor to work the traffic?
A. Ogden gateway.
Q. To all points east?
A. Yes, sir.
Q. East of the Missouri River?
A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. With reference to the difficulty about cars: did you ever apply to the Denver & Rio Grande agent for cars to be sent over the line?
A. No, sir, I couldn't apply to him.

Q. Didn't you understand that the difficulty about the fur-
4892 nishing of the cars to the Denver & Rio Grande, or with reference to the Southern Pacific or the Union Pacific, was due to the fact that under an arrangement between the Union Pacific and Southern Pacific for pooling cars, the payment of mileage was avoided?

A. I knew nothing about that, Judge.
Q. You don't know, then, that the Southern Pacific and Union Pacific have an arrangement by which the cars of each are at home on the tracks of the other?
A. No, sir.
Q. You don't know whether that was the reason why you encountered difficulty about cars?
A. No, sir, I do not.
Q. Does that difficulty exist now the same as it did during the great scarcity of cars a year or two ago?
A. Different rules have become effective at different periods. There are times when the Southern Pacific forces us to load nothing but line cars. When they accumulate a number of line cars, they want to get them off the system, I presume, to avoid paying mileage.
Q. What do you mean by "line" cars?
A. New York Central, Lake Shore, Erie, Pennsylvania, Louisville & Nashville—any line car beyond their own rails.
Q. Then, when you load one of those so-called line cars, it is sent over the line that owns the car?
A. Not necessarily.
Q. But ordinarily it is, isn't it?
A. Yes, sir.
Q. How about Denver & Rio Grande cars; do you have any of them to load at all?
A. Occasionally; we occasionally receive orders to load them.
Q. And then they will go over the Denver & Rio Grande, will they not?
A. Yes, sir.

4893 Q. If you have a Denver & Rio Grande car?

A. Yes, sir; that is, if they are ordered that way.

Q. The Southern Pacific will send them that way?

A. If they have them. Often they haven't them. We make requisition for them, and they say they haven't any cars of the D. & R. G. on their rails.

Q. But if they have, they furnish them?

A. We load them.

Q. Then they will route them over the Denver & Rio Grande?

A. Yes, sir.

By Mr. DUNNE:

Q. Did you ever make any shipments to Chicago?

A. Yes, sir.

Q. Were you ever solicited by Southern Pacific agents in respect to those shipments?

A. I can't say that I was—not to Chicago, not definitely.

Q. Have you any recollection, definite or indefinite, upon that subject?

A. Well, by which gateway?

Q. By any gateway.

A. Only in a general way. The Southern Pacific and the Union Pacific seem to say Ogden gateway, and if they have any equipment that way we load it that way.

Q. I am speaking now of prior to 1901, prior to the purchase by the Union Pacific of a percentage of the Southern Pacific stock. Your attention was called by Mr. Severance to that time as a point of departure. Now I ask you if prior to that time you shipped any dried fruit to Chicago.

A. Yes, sir, I did.

4894 Q. Were you solicited by the Southern Pacific agents in respect to these shipments, as to the route over which they should go?

A. No. I can't recall.

Q. Did you ship much dried fruit to Chicago?

A. Yes, sir.

Q. It is quite a considerable market?

A. Yes, sir.

Q. And have you no recollection, prior to 1901, of solicitation by Southern Pacific solicitors addressed to fruit consignments by you to as considerable a market as Chicago?

A. Not to Chicago.

Q. Did you ever ship any dried fruit to Pittsburg?

A. Yes, sir.

Q. Prior to 1901?

A. Yes, sir.

Q. Were you ever solicited by Southern Pacific solicitors in respect to those shipments?

A. Yes, sir.

Q. And as to what gateways?
A. New Orleans.
Q. Any other gateway?
A. No, sir.
Q. How much dried fruit did you ship to Pittsburg?
A. That I can't recall; that depends on the season—it varies.
Q. Did you send any considerable volume of dried fruit to Pittsburg?
A. Yes, sir.
Q. Do you recollect any particular instance or instances, or is your recollection merely of a general character as to the solicitation by Southern Pacific agents in respect to those shipments?
A. Pittsburg?
Q. Yes.
A. Yes, sir.
Q. What is your recollection?
A. My recollection is that they were striving for the busi-
4895 ness—during Mr. Staples' time, when he was the soliciting agent at San Jose.
Q. How many years ago is that?
A. 1891, 1892, 1893.
Q. 1891, 1892 and 1893?
A. During that time, yes.
Q. Now, between 1893 and 1901 were you solicited by the Southern Pacific agents in respect to Pittsburg shipments of dried fruit?
A. Well, I can't say. In a general way. Of course they are continually coming and asking for business, but I can't say that they definitely ask for Pittsburg business, although at one time the Sunset was strong in that territory.
Q. But I am asking you now about between 1893 and 1901. During that interval of time you are not able to say definitely whether you were solicited by Southern Pacific agents in respect to Pittsburg shipments of dried fruit?
A. From 1890?
Q. 1893 to 1901.
A. No, I can't say. It was during the early period.
Q. Exactly. It may be a matter of some moment here.
A. I have not charged my memory as to the exact date, but there was a period when the Southern Pacific worked that territory strong, and as to the exact date I can't recall.
Q. Did you ever ship any goods from Chicago to San Francisco prior to 1901?
A. I don't ship any goods from Chicago this way.
Q. Did you ever have occasion to ship any goods from Pittsburg or points north of Pittsburg to San Francisco prior to 1901?
A. All my shipments go the other way.
Q. You have no freight coming in that direction?
4896 A. No, sir.

Q. The shipments that would go by way of New Orleans into Pittsburg, how would they get from New Orleans up into Pittsburg?

A. Either over the L. & N. or Queen & Crescent or Illinois Central, up to Effingham, and then over the Vandalia and Pennsylvania.

4897 CHARLES CLIFFORD,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Clifford, where do you live?

A. San Francisco.

Q. How long have you lived in San Francisco?

A. Nearly eight years.

Q. Previous to coming here where did you live?

A. Cincinnati, Ohio.

Q. How long did you live in Cincinnati?

A. About a year and four months.

Q. And previous to that where did you live?

A. Butte, Montana.

Q. For how long?

A. About a year and a half.

Q. What was your business in Cincinnati?

A. General agent for the Union Pacific, freight and passenger traffic.

Q. And what was your business at Butte?

A. The same position.

Q. Previous to living in Butte where did you live?

A. I lived in Omaha.

Q. And what was your work there?

A. In the general freight office for the Union Pacific.

Q. Mr. Munroe's office?

A. Mr. Munroe's office, yes, sir.

Q. For how many years?

A. I was with Mr. Munroe from 1892 until 1898, and prior to that time I was in the local offices at Omaha and Council Bluffs, located there.

4898 Q. What time in 1901 did you cease your duties in Cincinnati?

A. I left there the 22d of July, 1901.

Q. What became of the Union Pacific general agency at Cincinnati when you left?

A. It was merged with the Southern Pacific office.

Q. You were the last general agent of the Union Pacific, separate general agent there?

A. Yes, sir.

Q. While you were at Cincinnati representing the Union Pacific, was it part of your duty to endeavor to secure transcontinental business?

A. Yes, sir.

Q. California business?

A. Yes, sir.

Q. Portland?

A. Portland.

Q. Los Angeles?

A. Yes, sir.

Q. And how did you route business to Portland when you secured it?

A. In connection with the Oregon Short Line and O. R. & N.

Q. From Omaha?

A. Yes, sir.

Q. Did it move from Cincinnati to Omaha or from Cincinnati to Kansas City ordinarily?

A. Practically all through the Omaha gateway.

Q. How did you move business to San Francisco and California points?

A. By Omaha or Kansas City and Ogden, as a rule.

Q. What territory did your agency cover? Anything outside of the city of Cincinnati?

A. Yes, I had all of the country east of the L. & N. line, part of Tennessee, and Indiana as far north and including Indianapolis, from the gas belt, Muncie, Marion and those places, and as far north in Ohio as Columbus; Virginia.

Q. You say you had all of Kentucky?

4899 A. All of Kentucky east of the L. & N. Railroad.

Q. That would be east of Louisville?

A. That included Louisville in my territory.

Q. Included Louisville and everything east of Louisville?

A. Yes.

Q. Lexington and Frankfort?

A. Lexington and Frankfort, yes.

Q. What part of Tennessee did you have?

A. I had Knoxville and Chattanooga, those iron towns around in there.

Q. Did you have to do with the movement of transcontinental traffic out of that territory?

A. Yes, sir.

Q. Kentucky and Tennessee?

A. Yes, sir.

Q. East-bound or west-bound?

A. Both.

Q. What classes of commodities moved west to California points?

A. General merchandise; practically carload shipments from that territory.

Q. What classes of merchandise?

A. A good deal of whiskey from Kentucky, and around Ohio we had buggies and vehicles and machinery.

Q. Yes; but I am speaking now of the territory south of the Ohio River. I will come to the other in a moment.

A. Well, it was not a very productive territory for the Union Pacific and I don't think for any of the lines, except whiskey; I think that was the largest commodity.

Q. Did tobacco move from there?

A. Yes, considerable tobacco.

Q. Did you have soliciting agents working under you, Mr. Clifford?

A. Yes, sir.

4900 Q. How many did you have?

A. Five.

Q. And did they work that territory in Kentucky and Tennessee?

A. Yes, sir.

Q. Such traffic as you secured from that region for the coast here moved through what gateway?

A. There was considerable of the traffic from south of the Ohio River moved by St. Louis and Kansas City.

Q. You would take it at Kansas City?

A. Yes.

Q. Now, coming up to the Ohio River: you say you had Louisville?

A. Yes, sir.

Q. Did that produce considerable tonnage or not?

A. Yes; quite a town for business.

Q. What kind?

A. Whiskey, principally; and a great many wagons shipped out of there by the Kentucky Wagon Company.

Q. How did that traffic move to the coast over your line, through what gateway?

A. That was divided, too, pretty well between the Omaha and Kansas City gateways.

Q. Coming up to Cincinnati and points north of the Ohio River, what kind of traffic did you secure?

A. Vehicles, machinery; at Cincinnati proper a good deal of whiskey, bottles, different kinds of glass articles.

Q. Now, you stated that you also solicited east-bound traffic.

A. Yes, sir.

Q. What kind of east-bound traffic from California points or Oregon points?

A. Dried-fruit, canned goods, beans—all such commodities as are peculiar to this coast.

Q. Did any hops move to Cincinnati from around Portland?

A. Yes.

4901 Q. How did you move those hops?

A. Do you mean in connection with the lines——

Q. Starting at Portland and going on east, how did they move?

A. O. R. & N. and Oregon Short Line, Union Pacific, Northwestern or Milwaukee or C. B. & Q.

Q. Any line into Chicago?

A. Big Four out of Chicago, or Pennsylvania, or Monon.

Q. Cincinnati is quite a brewing town?

A. Yes.

Q. Were there any other brewing cities in your territory?

A. Across the river, at Newport, there is a big brewery.

Q. Did they get hops from Oregon too?

A. Yes.

Q. Did you participate in that traffic?

A. Yes, we had some of that business.

Q. Now take Cincinnati. Did the Southern Pacific have an agency there at that same time?

A. Yes, sir.

Q. Who was their agent?

A. Mr. W. H. Connor.

Q. How long had Mr. Connor been there before he assumed his function as joint agent?

A. Oh, several years. I don't know how many, but I should say ten years.

Q. And was he engaged in securing transcontinental traffic, likewise?

A. Yes.

Q. How did he endeavor to route his transcontinental traffic out of Cincinnati?

A. By New Orleans.

Q. Did he have any soliciting agents under him?

A. Yes.

Q. Do you know how many?

A. He had about three, I think.

Q. Did those agents of Mr. Connor cover substantially the same territory as your five agents?

A. I don't think he had as much territory.

4902 Q. Did his agents go into this Kentucky and Tennessee territory, or only north of the river?

A. His agents?

Q. Yes.

A. Yes, he had that same territory south, except I don't think he had Tennessee.

Q. He had Kentucky?

A. Yes, sir.

Q. And in what territory did you meet his agents, in Ohio?

A. Oh, I would meet them in Dayton, Springfield, Columbus, Indianapolis.

Q. Take Indiana also?

A. Yes, up through that Miami Valley country there.

Q. I didn't ask you about the class of traffic that moved from those interior towns in Ohio and Indiana. What kind of coast traffic moved from those places?

A. Take it at Marion and Muncie and Gas City, a great deal of glass—bottles and jars and all kinds of glassware. That was the principal tonnage.

Q. Take Columbus and Dayton and Springfield.

A. Columbus is quite a vehicle town: a great many buggies are made there by the Columbus Buggy Company; a great deal of machinery is manufactured in Columbus, and in Springfield also.

Q. Dayton is quite a manufacturing town, isn't it?

A. Dayton, yes, quite a town.

Q. The rates, I suppose, were equal both by Mr. Connor's route and yours, weren't they?

A. The rates were the same.

Q. I mean on the coast business.

A. Yes, sir.

Q. Now, you came from Cincinnati out to San Francisco, and I believe you said you were for a time the general agent of the Union Pacific here.

A. Yes, about five years.

4903 Q. You arrived here in 1901?

A. Yes, sir.

Q. What month, do you remember?

A. I got here about the first of August.

Q. When you arrived here how was the business moving through the Ogden gateway as between the Union Pacific on the one hand and the Rio Grande on the other, east of Ogden? How was it divided?

A. The Rio Grande were getting the big end of it at that time.

Q. You say the big end; you mean more than a half?

A. Yes, sir.

Q. Could you venture an opinion as to the percentages?

A. About 65 and 35.

Q. The Rio Grande were getting 65 and you 35?

A. Yes.

Q. How long did that continue after you arrived here?

A. That was due to an abnormal condition here.

Q. What was it?

A. The Union Pacific were maintaining rates and the Rio Grande were not.

Q. How long did they continue in that species of activity?

A. They were in that about a year, I guess, after I got here.

Q. After the rates were put on a parity, actually as well as on paper, how did the business divide at Ogden?

A. I don't know just what the actual percentage figures were, but the Union Pacific led them.

Q. What was the attitude of the Southern Pacific agents here as between the Union Pacific and the Rio Grande after you came out here?

A. Towards the Rio Grande, you mean? Do I understand you to mean towards the Rio Grande?

4904 A. I say as between the Union Pacific and Rio Grande, after you came here and were engaged as general agent of the Union Pacific, what was the attitude of the Southern Pacific people on traffic that had to move by Ogden, as between the two lines?

A. They favored the Union Pacific.

Q. I asked another witness, and possibly you may know something about it, as to whether there was established or conducted here a claims bureau by the Union Pacific, for the prompt adjustment of claims.

A. Well, the Union Pacific general agent was the claim agent.

Q. Oh, he was the claim agent?

A. Yes.

Q. You found that situation when you arrived here?

A. Yes, sir.

Q. You had been in the Union Pacific office at Omaha years before, I understand?

A. Yes, sir.

Q. Was that function possessed by the general agent here then?

A. Yes, sir.

Q. Why was that established?

A. That was established originally to put the Union Pacific on the same basis for expeditiously handling all claims as were the Southern Pacific; that was the reason for it.

Q. What effect did the establishment of that claims bureau at San Francisco have upon the securing of business by the Union Pacific?

A. The Union Pacific made themselves stronger by reason of their ability to settle promptly a man's claims—pay him his money promptly.

Q. At that time which way was the Southern Pacific routing its business so far as it could control it?

4905 A. The Southern Pacific were routing via New Orleans.

Q. What is commonly known as the Sunset Route?

A. The Sunset, yes; depending on where it originated, of course.

Q. One of the witnesses here to-day testified that he assisted in preparing a division-sheet which was sent out, showing the revenue accruing west of Omaha and New Orleans on all-rail business, with instructions that business be solicited through the gateway giving the Harriman lines the most revenue, or something to that effect.

A. Yes.

Q. Do you know anything about that circular?

A. Yes, I have seen it.

Q. Will you state what it was as far as you remember?

A. It took the rates from—I think the minimum rate of 50 cents to the higher rate, showed the revenue accruing west of the various junction points. That is all there was to it.

Q. Applying by the different routes?

A. Yes, sir.

Q. Where did you see it?
A. I saw it in San Francisco.
Q. At what office?
A. At my office, Union Pacific office.
Q. You had a copy of it?
A. Yes, sir.
Q. You stated that you represented the Union Pacific at Butte. Did the Southern Pacific have any representative there?
A. Yes, they had a traveling freight agent.
Q. What was his name?
A. His name was Steifel.
Q. Did the O. R. & N. have an agent there?
A. Yes, sir.
Q. What was his name?
A. H. O. Wilson.
Q. What kind of business were those men working?

A. The Southern Pacific man of course worked east-bound
4906 California traffic into Montana and the Oregon Short Line man worked coast business as well as eastern business.

Q. Take the business from San Francisco to Butte: was that a business of considerable amount?
A. Yes, quite a tonnage.
Q. When you were at Butte did you have charge of Montana common points or only Butte?
A. The state of Montana.
Q. Did these other gentlemen cover the same territory for their lines?
A. Yes, sir.
Q. What are the principal distributing points in Montana to which the same rates apply from San Francisco?
A. Butte, Helena, Anaconda, Deer Lodge: those are about the principal common points.
Q. What kind of traffic moved to those points from California points when you were there?
A. Sugar was one of the principal commodities: canned goods, beans, dried fruit, citrus and deciduous fruits.
Q. How was the solicitation of that business by these two agencies at that time—active or otherwise?
A. Very.
Q. How did the Southern Pacific move the traffic from San Francisco to these common points?
A. Their preferential route was the Ogden Route.
Q. Did they move it by any other route?
A. Yes, they moved it via Portland—Shasta Route to Portland; the O. R. & N. to Wallula Junction with the Northern Pacific, and also with the O. R. & N. for Portland via Huntington and the Oregon Short Line.

Q. How did the O. R. & N. people move their traffic from
4907 San Francisco?

A. With whom did they work?

Q. Yes. I say how did they move the business out of San Francisco?

A. They naturally, of course, worked for their boat line. They had to, to get any business; that is, not to get *any* business, but to get their share of the business.

Q. And then from Portland how did the business move, that they took up by boat?

A. Of course they took the long haul on it to Huntington or to Spokane.

Q. Were divisions in through all these various gateways?

A. Yes, sir.

Q. During all the time you were there?

A. Yes, sir.

Cross-examination by Mr. DUNNE:

Q. Mr. Clifford, did any of these other lines have claim agents here in San Francisco, too?

Mr. SEVERANCE. I can't hear the question, Mr. Dunne.

Mr. DUNNE. I think he said something about the Union Pacific general agent acting as claim agent.

Mr. SEVERANCE. Yes, here in San Francisco.

Q. Did any of the other lines adjust claims through their general agents or in any other way?

A. Not to my knowledge.

Q. Have you any knowledge upon that subject? That is, can you say whether it was so or not, positively?

A. No, I can't.

Q. Now, you spoke, Mr. Clifford, with respect to some points south of the Ohio River, and included them within Cincinnati jurisdiction; you said that it was not a very productive country for the
4908 Union Pacific; but such freight as it did produce for the Union Pacific, through what gateways did that freight pass?

A. Either through the Kansas City or Omaha gateway.

Q. From points south of the Ohio?

A. Yes.

Q. Did it also pass through St. Louis?

A. It would naturally have to pass through St. Louis if it went via Kansas City; those lines terminated there.

Q. What were the initial lines upon which that freight moved to those several gateways?

A. Out of Louisville proper we will say B. & O. S. W., the L. & N., the Henderson Route; those are the principal lines out of Louisville. Of course down in Owensboro, Kentucky, and other points there, the L. & N. were pretty strong down through that country.

Q. Did any other initial lead from those points?

A. Yes, sir.

Q. To these gateways?

A. Yes.

Q. What lines?

A. I don't just recall now what other lines there are. I mentioned the B. & O. out of Louisville; the L. E. & St. L.—that is one I didn't mention. The L. E. & St. L., the Henderson Route. Of course the Southern Railway get down through there too, in connection with the L. E. & St. L. now.

Q. At those gateways, St. Louis and Kansas City, were there any lines leading from those gateways that could take that freight to its ultimate destination?

A. Yes.

Q. Without passing it over the Union Pacific?

A. Yes.

Q. What lines were those?

A. The Santa Fe could take it; the Missouri Pacific in connection with the Santa Fe to Pueblo, or the Rio Grande and the Ogden
4909 gateway, with the Southern Pacific; the Rock Island by El Paso; the Burlington to Denver; several lines.

Q. Now, if that freight did not pass through the gateways that you have mentioned, it could go south towards New Orleans, could it not?

A. Yes.

Q. What lines would pull it down that way?

A. The Queen & Crescent out of Louisville or Cincinnati, the Illinois Central, the L. & N.; those are about the principal lines.

Q. Regardless of the interposition of the Union Pacific, that freight was highly competitive in a number of directions, was it not?

A. Yes, it was competitive traffic.

Q. And assuming the entire elimination of the Union Pacific, it would still remain highly competitive traffic, wouldn't it?

A. Yes, sir.

Q. Were not the St. Paul and the Burlington interested in that freight from those points, and soliciting it?

A. Yes.

Q. Now take the points north of the Ohio River; take Cincinnati, for instance; the freight from those points that you were interested in moved through what gateways, principally?

A. As far as our line was concerned?

Q. Yes.

A. Through the Omaha gateway.

Q. Did it move through Chicago?

A. Yes, Chicago and Omaha.

Q. Through any other gateway besides Chicago?

A. Yes, Peoria and Omaha.

Q. And could that freight move to its destination from the
4910 coast by other lines, excluding the Union Pacific as a factor in the transportation?

A. Yes, sir.

Q. What lines?

A. By the Santa Fe from Chicago or Kansas City, or the Rio Grande and Burlington, Rock Island and Southern Pacific, the Missouri Pacific, D. & R. G.—several of them.

Q. The truth of it is that the competitive territory in question would still be gridironed with competitive lines if the Union Pacific were eliminated altogether; isn't that so?

A. Yes; they were all looking for business.

Q. Did the Union Pacific lines touch any of these competitive points at all?

A. With their own rails, you mean?

Q. Yes.

A. No, sir.

Q. And could any of this competitive business reach its final destination, assuming that the Union Pacific got a share of the haul, without passing over the Southern Pacific?

A. No.

Mr. SEVERANCE. You mean to San Francisco?

WITNESS. That is as far as San Francisco is concerned, and Los Angeles.

Q. Exactly. That is what I am speaking of.

Mr. LOVETT. You mean south of Portland?

Mr. DUNNE. Yes, south of Portland.

WITNESS. Yes.

Q. Most of that business south of Portland went to California points, I presume; did it not?

A. Well, if you want to include the Willamette Valley and those places. I suppose you are speaking of California, are you not?

Q. Yes. Did any of that business go by way of Portland and the boats?

4911

A. No.

Q. It did not?

A. No.

Q. Were you ever instructed to solicit business by that route?

A. No, we had no rates or divisions that way.

Q. How many years did your service in this competitive territory cover?

A. Here in San Francisco?

Q. Both in San Francisco and in Cincinnati and the general office at Omaha.

A. About 25 years.

Q. During these 25 years do you know of any business solicited by the Union Pacific from this territory north and south of the Ohio River that went by the circuitous route: Portland, trans-shipped at Portland to boats, and taken by the boats to San Francisco?

A. Not by the O. R. & N. boats, no.

Q. Do you know of any through business from this territory that ever went that way, so far as you are concerned?

A. Except an occasional car that was mis-routed, I presume.

Mr. SEVERANCE. What is that?

WITNESS. An occasional mis-routed car.

Q. Can you tell me why it was that none of this freight from this territory, during all of these years never went by that rail and water route, via Portland and the ocean?

A. Well, it was not a natural route.

Q. Do you consider it a practicable railroad route?

A. No, I do not.

By Mr. SEVERANCE:

Q. There is a difference between you and Mr. Stubbs. He said he would not say it was impracticable. Now you say you didn't know of any that moved by O. R. & N. boats. Did you know of any of it moving up there by the Union Pacific and the Short Line and the O. R. & N. and then by some other boat?

4912

A. No; I had in mind when I answered that question the Pacific Coast Steamship Company. Of course they handled business up that way.

Q. Do they handle business to the east that comes into Portland, or only into Puget Sound points?

A. No; not by Portland. They handle it by Seattle and Tacoma.

Q. Is there any physical reason why business cannot be handled by Portland and the O. R. & N. boats down here as well as by Seattle and the Pacific Coast Steamship boats?

A. None that I can see.

Q. And you know, don't you, that for years a great traffic came in here by the Canadian Pacific and Vancouver in connection with the Pacific Coast Steamship Company?

A. Yes.

Q. The Portland route is just as available as that, isn't it—just as practicable?

A. Yes; they had a differential.

Q. Certainly; but you said a moment ago, in answer to counsel, that you did not regard that route as practical or practicable—I don't know which you said.

A. Well, I perhaps said that for the reason that, being in the railroad business so many years, I would not—I don't think I would care to ask a man, a friend of mine, to ship his goods from Chicago to San Francisco by Portland.

Q. At even rates?

A. At even rates.

Q. But if you were operating under a lower tariff, as the Canadian Pacific did for many years, you would not be at all ashamed to ask him for the business, would you?

4913

A. Not a bit.

Q. Now, isn't there a very large traffic indeed moving from the Atlantic seaboard to points in the middle west, to Minnesota and Iowa and Wisconsin and Illinois, which moves boat-and-rail during the open lake season?

A. Yes.

Q. And that moves at a lower rate, doesn't it, than the all-rail rates?

A. Yes.

Q. That business is competed for, isn't it, by the all-rail lines as against the boat-and-rail line?

A. Yes.

Q. Actively?

A. Yes.

Q. And that is a very large traffic, isn't it?

A. It is a large traffic into the Puget Sound country.

Q. In the open season?

A. Yes.

Q. And that has been so for many years, hasn't it?

A. Yes, they have a differential—have had.

Q. They have a differential?

A. Yes.

Q. And they have very fine ships on the lakes to transport that traffic, don't they?

A. Yes, they have good boats.

Q. They have boats there of much heavier tonnage than many of these coast steamers between here and Puget Sound?

A. Yes.

Q. Along between 10 and 20 thousand tons capacity?

A. Those are the Northern Pacific and Great Northern boats you have reference to?

Q. Well, there are other boats I have reference to. There are lots of big boats on the lakes that are engaged in that traffic in connection with the rail lines out of New York?

A. Yes; they handle a tremendous tonnage.

4914 Q. And that is perfectly practicable, isn't it?

A. Yes.

By Mr. Dunne:

Q. Mr. Severance asked you if there was not a great traffic by the Canadian Pacific when it had this differential. I don't know just exactly what he meant by great traffic. Expressions of that kind are very elastic. Was it a very considerable traffic as compared with the traffic through the regular channel—Ogden and all-rail into California?

A. Well, they handled a very nice business; I don't know how much.

Q. How did it compare in volume with the all-rail business through Ogden by the natural route?

A. I couldn't say as to that, Mr. Dunne.

Q. Very well. Then, you are not able to speak comparatively?

A. No.

Q. What became of this traffic, great or small, by the Canadian Pacific when the differential was withdrawn?

A. It was practically eliminated.

By Mr. SEVERANCE:

Q. My friend Mr. Dunne asked you if the country between here and the place where that competitive traffic originated, down around Cincinnati, isn't "gridironed" with railroads. That was his expression.

Q. And you said it was. Considering the distance from the Canadian border to the Mexican border, you wouldn't say, would you, that the country west of the Missouri River is gridironed with railroads, east and west?

A. No——

4915 Q. What you intended to say was that the territory east of the Missouri River was gridironed, wasn't it?

A. Yes.

Q. That is what you had in mind?

A. I had in mind the territory east of Chicago and St. Louis.

Q. So that there are very considerable spaces between the roads in this gridiron west of the Missouri River?

Mr. DUNNE. I asked him east of the Missouri River.

Mr. SEVERANCE. No, Mr. Dunne.

Mr. DUNNE. I said Cincinnati and this country that Mr. Severance is so familiar with, where the whiskey comes from.

Mr. SEVERANCE. No, my friend, you said eliminating the Union Pacific, wouldn't it be gridironed.

Mr. DUNNE. I meant eliminating the Union Pacific as a factor in the haul.

Mr. SEVERANCE. Oh, that is it?

Mr. DUNNE. That is it.

WITNESS. I guess there are as many lines, as much mileage, between the Missouri River and the Mississippi River, from the territory of Sioux City, Iowa, if you please, down to St. Louis, as there are in the territory east of the Mississippi River.

Q. Undoubtedly. But the gridiron doesn't extend west of the Missouri River?

A. No, not——

Q. So, if you eliminate the Union Pacific, as my friend seems to want you to do, it makes quite a hole, doesn't it?

(No response.)

(An adjournment was here taken until the morning of Tuesday, May 11, 1909, at 10:30 o'clock.)

4916 UNITED STATES DISTRICT COURT ROOM,
SAN FRANCISCO, CAL.,
Tuesday, May 11, 1909—10.30 a. m.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance and Mr. G. E. Husted; on behalf of the Defendants, Mr. R. S. Lovett and Mr. Peter F. Dunne and Mr. W. R. Kelly.

C. R. HAVENS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE.

Q. Mr. Havens, where do you live?
A. Berkeley.
Q. And what is your business?
A. I am with Murphy, Grant & Company.
Q. What is your position with Murphy, Grant & Company?
A. Vice-president.
Q. What is their business?
A. Wholesale dry goods.
Q. From what part of the country do you secure the commodities that you wholesale?
A. We buy them through our New York office.
Q. In what part of the west do you wholesale your goods?
A. Through California, Oregon, Washington, a little in Idaho, in Arizona, and a little in New Mexico, and some in Nevada.
Q. How does the bulk of your freight move from New York?
A. The bulk of our freight moves by rail.
Q. All rail or rail and water?
A. I think the principal portion of it is Southern Pacific Sunset Route.
4917 Q. The Sunset-Gulf Route?
A. Yes.
Q. How long have you been using the Sunset Route?
A. A number of years.
Q. Can you tell how long? A. No, I could not.
Q. How many years have you been with Murphy, Grant & Company?
A. I have been there since about 1878.
Q. Did you commence using the Sunset Route soon after it was established?
A. I think so.
Q. Previous to the establishment of the Sunset Route how did your traffic move, chiefly?
A. That would be prior to my time. It came around by sailing vessel.
Q. Not prior to your time? The Sunset Route was established in 1883.
A. 1883.
Q. Now, previous to that, after you went there in 1878, how did your traffic move?
A. I couldn't say; I wasn't familiar with it at the time.
Q. Have you used any steamship line latterly?
A. We have shipped some by the Tehuantepec line.
Q. That is the American-Hawaiian Company?

A. Yes.

Q. How long does it take them to get traffic here from New York?

A. About 45 days.

Q. Do they ever get it through quicker than that?

A. That I couldn't say. The other day, when Mr. Husted called on me, I had the shipping clerk come in with his book and I asked him how long it took, and he said about 45 days.

Q. How long does it take to get traffic through by the Sunset Route?

A. He reported at the same time about 18 days.

Q. Does any of your stuff come all-rail?

4918 A. I think so, yes. I think there is some of it that emanates from somewhere in the middle west which comes that way, but I don't know that there is very much of it.

Q. And from New York the Sunset Route is your route, as a rule?

A. Yes, as a rule.

Q. Unless you send it by the American-Hawaiian line?

A. Yes, as far as I know.

Q. Have you ever used the Panama route?

A. You mean the Pacific Mail?

Q. Yes.

A. No, not that I know of; we may have, but I don't know of it.

Q. Has your business been solicited by the Pacific Mail?

A. That I don't know.

Q. So far as you know has it?

A. So far as I know I couldn't say anything about it, because when solicitors come in I simply tell them that the New York office does the routing.

Q. You don't charge your mind with solicitors efforts?

A. Not at all.

Q. Don't pay any attention to them?

A. No. Sometimes they come in and I refer them to the New York office, and throw their card into the waste basket.

Q. In shipments to Portland how does your traffic move—boat or rail, or both?

A. I presume it moves both.

Q. And has during all of your connection with the business?

A. Yes. It depends entirely on how the customer orders it routed. Whatever way the customer orders it to go, we simply ship it that way.

Q. The consignee routes it?

A. Yes.

4919 Q. And it goes both ways?

A. Yes.

Q. According as the customers route it?

A. Yes, according as they direct.

Q. Do you ship to Boise?

A. We have; did before the fire.

Q. How did your traffic to Boise move?

A. I think that moved by way of the O. R. & N. Company, although we have had one or two shipments up into southern Idaho where we had to figure the freight both ways, by way of Ogden and by way of Portland, and where there was a slight saving in freight either one way or the other, we had to ship the freight that way, the way that the saving would be made. We only had one or two shipments, I recall, where we had to figure anything of that kind.

Q. Did any of your traffic to Boise ever move by Ogden?

A. That I couldn't say.

Cross-examination by Mr. LOVETT:

Q. What boats are operating between San Francisco and Portland, do you know?

A. No; I only know there is a line of steamers operating there.

Q. Don't you know the name of the line?

A. I have understood that it was the O. R. & N. Company.

Q. Do you know anything about the North Pacific Steamship Company?

A. Nothing particular.

Q. Operating steam schooners?

A. That I don't know anything about. I never paid any attention to anything of that kind. Our shipping department simply ships the goods, as I say, whichever way they are instructed to ship them. We don't bother anything about the freight we distribute.

Q. And you are not familiar with that route or the steamers operating on it?

A. No.

4920 A. L. SCOTT.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE.

Q. Mr. Scott, where do you live?

A. I live down in Burlington.

Q. What is your business?

A. Hardware business.

Q. What company are you connected with?

A. The Pacific Hardware & Steel Company.

Q. In what capacity?

A. President.

Q. How long have you been with that company?

A. Ever since it was organized, since 1902.

Q. Previous to that what was your business?

A. I was with Miller, Slows & Scott. That was the predecessor to the Pacific Hardware & Steel Company.

Q. And since what time have you been in the hardware business here?

A. I have been in the hardware business here since 1882. With Dunn, Carrington & Hayden Company up to 1891, I think it was.

Q. From what part of the United States do you import your goods that you sell wholesale?

A. Largely from Pittsburg district and the seaboard, and considerable from the middle west, Chicago district and that region, and then as far west as St. Louis and Iowa—a small portion of that section. The great preponderance of it comes from Pittsburg—from between Chicago and New York and the seaboard.

Q. Into what states and territories do you wholesale?

A. We wholesale in California, Nevada, Oregon, Washing-
4921 ton; the western part of Idaho, from Boise City west; and the western half of Arizona.

Q. By what routes have you brought goods from the seaboard and Pittsburg territories in the course of your business here?

A. We bring them by rail and we bring them by water, both. All-rail route some, and some via Tehuantepec, and some via Panama, a small proportion—well, a pretty good proportion by Panama, I guess; that is, in tonnage.

Q. When they come all-rail what routes have you used?

A. We have used all the routes—the Santa Fe and the S. P. Company and the Gould lines; it has been divided up, that is, covering the past number of years. Just now we are not shipping so heavy by rail as we were.

Q. Have you shipped by the Omaha gateway?

A. Yes.

Q. By the Union Pacific?

A. Oh, yes; we have shipped lots of goods by the Omaha gateway.

Q. Ever ship by New Orleans?

A. Yes, sir, largely.

Q. From what territory?

A. From New York territory we have shipped largely by Sunset in previous years; we are not shipping very much now by that route.

Q. Have you shipped from Pittsburg and Cincinnati and that vicinity by New Orleans also?

A. Yes, sir.

Q. All-rail?

A. All-rail, yes, sir.

Q. How many years ago did you make those shipments? Has that been continuous since you have been in the business, off and on I mean?

A. Oh, yes, more or less. At periods we have shipped a large quantity of goods over one route and then changed over to another.

4922 Q. You said a moment ago that you had used the Panama route at times.

A. Yes, sir.

Q. You first said not much, and then afterwards considerable.

A. Well, I stopped to think of the tonnage over that. There are periods when we don't use it very much and periods that we do. It happens just now that we are shipping considerable staple goods via Panama.

Q. Just now?

A. Yes.

Q. How are the rates at the present time by the Panama route as compared with the Sunset or all-rail lines?

A. Well, they are rather peculiar. The Panama route is made upon a percentage of the through rate—all-rail rate that is, and it fluctuates just as the railroad company fluctuates. If the railroad company puts up the rates, the rate by Panama automatically advances; if the railroad puts down the rate, the rate by Panama automatically goes down. In other words, the relationship of rates remains the same.

Q. That is the rule that usually applies where there is an agreed differential, isn't it? If the rail rates go up, the water rates go up with it, and down the same way?

A. What is that?

Q. Where there is an agreed differential between a second-class route and a standard route, that is the rule; the rates go up and down together?

A. Yes.

Q. Has that been the case for a long time with the Panama route or not?

A. I can't recall how far back that is. For some time that has been true. I don't know what the date was when that was put
4923 into effect. I think that went into effect after the change in the Panama route took place. That is my recollection, but I would not vouch for that.

Q. What ships now run in connection with the Panama route?

A. The Pacific Mail runs on this side.

Q. That is what I mean.

A. And on the other side the Government line of steamers runs.

Q. The Pacific Mail are still running on this side?

A. Yes, sir.

Q. What is the character of their boats?

A. What is generally called a lot of tubs.

Q. And have they been tubs for some time?

A. Yes, sir.

Q. How do they compare with the ships of the American-Hawaiian line?

A. Oh, there is no comparison at all.

Q. How are the ships of the American-Hawaiian line? First class, or otherwise?

A. First class, up-to-date cargo ships. They are modern, oil-burning vessels, with proper facilities for handling freight in and out—cargo facilities.

Q. Has your freight been solicited by the agents of the Pacific Mail?

A. You see our freight is all west-bound freight, and it is taken care of on the other side.

Q. The solicitation is all on the other end?

A. All on the other side, yes, sir.

Q. So you don't know anything about that?

A. No; I don't remember whether it has been solicited this side or not; it might have been and it might not have been.

Q. Previous to the time that the Southern Pacific and Union Pacific came under one domination, what was the attitude of the Southern Pacific people in the solicitation of freight, if you knew anything about it at that time?

4924 A. Yes, I am somewhat familiar with it. The position of the Southern Pacific?

Q. Yes, sir.

A. They were very anxious to get their business via that route, via New Orleans, and the Union Pacific was very anxious to get it by the other route.

Q. Did you ever ship any goods from Chicago by way of New Orleans?

A. Yes, sir.

Q. How did that move out of Chicago?

A. Illinois Central as a rule, to New Orleans, and then from there by Sunset.

Q. How long ago was that?

A. Well, there never was any great tonnage moved that way for the reason that we never bought a great tonnage in Chicago, and the products that moved that way were carloads of freight that came from the Chicago territory, and almost any time when we were shipping by Sunset we would ship cars over that route—a portion of them, not all.

Q. Have you ever at any time shipped to Idaho points, around Boise, by Ogden?

A. Yes, sir; did one time largely.

Q. When did you do that?

A. I am trying to recall the dates. A great many years ago we used to ship everything by Ogden; I think it was back in—well, it was after 1893, because I can recall the fact that I had a conversation with Mr. Sproule about getting in that territory, and it was almost through his solicitation that I sent men into that territory, into Utah and into Idaho both, and for a long time we shipped by Ogden, and afterwards the tariff was cancelled and we had to ship via Portland.

Q. How did traffic move when it went to Portland?

A. How does it move?

Q. Yes.

A. Well, into eastern Idaho from San Francisco.

4925 Q. From San Francisco up to Boise?

A. Over the Western portion we moved some small proportion of it, but it didn't move in the eastern portion. We tried to hold it afterwards but we couldn't hold it; we took our men off of the territory, it was unprofitable.

Q. Do you now ship up to Boise?

A. We ship from Boise west. You see that is a short distance from Boise west, but over east of Boise we practically ship nothing now. We have simply retired from the territory.

Q. How does your traffic move that goes to Boise and vicinity?

A. By Portland.

Q. And by what route to Portland—boat or rail?

A. I am sure it goes O. R. & N. by water from here to Portland and from there out by rail over the O. R. & N. road. The rate was made undoubtedly to move the freight by Portland; in fact they did not hesitate in saying so.

Q. And that rate was not met by the Ogden route?

A. No, the tariff was cancelled by Ogden. The tariff used to be by Ogden. To the best of my recollection it equalled the Portland tariff around the other way, and they wanted to move the freight via Portland and they cancelled the tariff via Ogden, because I went to see them about it at the time.

Q. How do the rates between Portland and San Francisco compare with what they were formerly?

A. Well, they are higher. The rate to-day between Portland and San Francisco is $4 where it used to be—well, 20 cents (that would express it better) a hundred; it used to be 15½. The rates were raised the 1st of April.

4926 Q. When were the rates raised?

A. The 1st of April this year.

Cross-examination by Mr. DUNNE:

Q. Mr. Scott, does the Panama Railroad interchange business with any other ships except those of the Pacific Mail Steamship Company?

A. On this side?

Q. Yes.

A. For San Francisco?

Q. Have you any knowledge on that subject?

A. I am not sure whether they do or not. I think they do, Mr. Dunne, but as a matter of fact no vessels are regularly running between Panama and here to take the cargo. Even if they did, a merchant could not wait for tramp ships or three-month ships. But I think they do. I think when they opened up the Panama Railroad, under Secretary Taft's administration, that they opened it up to any ships that would take a cargo. I am not positive, but that is my impression.

Q. Were there any foreign ships on this side that they interchanged with, as well as American?

A. They could not carry American goods in foreign bottoms.

Q. Well, before they reached the American ports?

A. Before they what?

Q. Before they reached American ports at all.

A. Oh, I think they do between foreign ports; yes, sir. I think they do. For instance, the coffee trade is handled in foreign bottoms.

Q. What is the average tonnage of the Pacific Mail Company ships operating between the Isthmus and the coast here?

4927 A. Between the Isthmus and the coast?

Q. Yes, the Pacific Mail, on this side.

A. Now?

Q. Yes.

A. You mean the goods that are hauled——

Q. No, the tonnage of the ship, the tonnage capacity.

A. Oh, I couldn't tell you.

Q. Do you know?

A. No.

Q. Do you know the average tonnage capacity of the American-Hawaiian ships?

A. I know that in a general way they are large vessels and carry from 5,000 tons up; I think a great many of them carry 10,000 tons, to the best of my recollection, a large number of those vessels.

Q. That is mere conjecture on your part?

A. No, that is not conjecture; that is my knowledge, that they are 10,000-ton ships, because we built some of them here. The Union Iron Works built several of them—large vessels, 10,000 tons. They run between 5,000 and 10,000. I think the "Nevada" is 5,000; I think the "Arizona" and the "California" and several others are from 8,500 to 10,000. They are big ships.

Q. Do you know what the average tonnage is that they carry to this port?

A. Yes, they come in here with 5,000 tons.

Q. Do you know what the average tonnage is to this port on the Mail Company's ships?

Mr. SEVERANCE. What is that question?

Mr. DUNNE. The average tonnage on the Mail Company's ships.

Mr. SEVERANCE. The Pacific Mail, you mean?

Mr. DUNNE. Yes.

4928 A. The Panama brings in as high as 5,000 tons a boat, and the total tonnage—I had a chance to look into it within 90 days—the total tonnage of the Pacific Mail per month in here, with all their vessels—it is either three or four months—three, I think it is—is something like 24 or 25 hundred tons. I know it is not as much freight as we ship.

Q. Now, when was this Ogden tariff canceled?

A. I couldn't recall the date, but it was a number of years ago. I can recall about the date, I think. To the best of my recollection it is over five years ago, six years ago.

Q. Oh, by the way, Mr. Scott, with reference to the tonnage brought here by the Pacific Mail Steamship Company; that is tonnage delivered to it by the Panama Railroad, is it not?

A. That is tonnage that originates in New York for San Francisco.

Q. But that tonnage is carried by the Government ships to the Isthmus, isn't it?

A. Yes, sir.

Q. And then the rail company carries it across the Isthmus?

A. Yes, sir.

Q. The Pacific Mail Company comes in contact with the business at the Isthmus?

A. Yes, sir.

Q. It is interchanged with the railroad?

A. It takes it from the railroad and brings it in.

Q. The American-Hawaiian Steamship Company is a through line from New York by the Isthmus of Tehuantepec, is it not?

A. Yes, sir.

Q. The eastern ship unloads at the port—what is it called?

A. Salina Cruz or Coatzacoalcos.

4929 Q. Do you recall?

A. I don't recall; the names are hard to remember.

Q. Then it is taken across the Mexican Railroad at the Isthmus?

A. Yes.

Q. And then the American-Hawaiian ships operate on this side also, do they not?

A. Yes, sir.

Q. So that it is practically a through line, the American-Hawaiian line?

A. You mean all owned by the American-Hawaiian, the boats on both sides?

Q. Yes.

A. Yes, they operate boats on both sides, and have a lease from the Mexican government to carry their tonnage across.

Q. Who were the parties to this Ogden tariff that was canceled, you say, five years ago?

A. The Southern Pacific and the O. R. & N. Well, the Southern Pacific and the O. R. & N., they did it together, understandingly of course. It was pleasing to both of them.

Mr. SEVERANCE. Do you mean the O. R. & N. or Short Line?

Q. Who were the parties to the Ogden tariff? You don't mean the O. R. & N., do you?

A. Yes.

Q. You mean the Southern Pacific and the Union Pacific, don't you?

A. No, sir; the O. R. & N. office in Portland had charge of that transportation, from Portland to that territory.

Q. Well, in plan English, Mr. Scott, who were the carriers that operated under the Ogden tariff?

A. The Southern Pacific from here, the O. R. & N. from Portland, and from San Francisco by water.

Q. No, no, I am speaking of the Ogden tariff.

4930 A. Oh, the Ogden? I had in my mind the Idaho tariff.

Q. Yes.

A. The Ogden tariff was the Southern Pacific; but I didn't say anything about the Ogden tariff. I said the rate via Ogden into Idaho. I don't think they have ever cancelled the Ogden tariff.

Q. You didn't intend so to be understood, did you?

A. No. I was speaking of Idaho territory when Mr. Severance asked me via Ogden.

Q. But you didn't mean to be understood that the Southern Pacific tariff via Ogden had been cancelled, did you?

A. Yes, sir, I did mean that.

Q. In connection with what other carrier?

A. In connection with the Short Line from Ogden up, and in connection with the O. R. & N. out the other route via Portland, with the Short Line from Huntington over to Pocatello.

Q. Now, the Oregon Short Line was a party to that tariff?

A. The Oregon Short Line from Ogden up?

Q. From Ogden on, yes.

A. Why, certainly.

By Mr. SEVERANCE:

Q. This tariff, you said, was canceled five or six years ago?

A. More than five or six years ago. I can't recall just the date, because five years ago I was away from the city, but it was previous to that time.

Q. Would you say, Mr. Scott, whether that was canceled after the Union Pacific line and the Southern Pacific had common traffic departments?

A. I couldn't say that from my recollection. That is sub-

4931 ject to proof, by hunting up the tariff and ascertaining when it was in effect and when it was canceled.

Q. You could not tell from recollection?

A. I could not tell from my recollection. I think it is more than five years ago.

4932 J. H. COOPER,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Cooper, where do you live?

A. 827 Oak street, San Francisco.

Q. What is your business?

A. Assistant manager for the Pacific Coast Steamship Company.

Q. How long have you been with the Pacific Coast Steamship Company?

A. With the Pacific Coast Steamship, under Goodall, Perkins & Company, when they were general agents, since 1887, I think.

Q. How long have you been the manager here of the Pacific Coast Steamship Company?

A. Assistant manager, Mr. Severance.

Q. How long have you been assistant manager?

A. Since October, 1907.

Q. Previous to that what was your relation to the company?

A. General freight agent since 1902.

Q. Do you remember years ago how the service between San Francisco and Portland by the O. R. & N. boats, as they were called then, compared in frequency with what it is now?

A. At that time, some years ago, they were running two boats, making sailings every five days, if I remember correctly. Now they are running two boats and sailing every seven days.

Q. Are they the same boats or different boats?

A. Different boats.

4933 Q. Does the Pacific Coast Steamship Company make Portland?

A. No, sir.

Q. What are your ports of call along the coast?

A. Puget Sound ports, including Victoria and Vancouver, British Columbia; southeastern Alaska; Nome, in its season; St. Michael, Mazatlan, and the Gulf ports—Mexico to Alaska.

Q. And you make all the ports on the coast here in California, do you?

A. Yes, the larger ports.

Q. San Francisco?

A. San Francisco.

Q. San Pedro?

A. San Pedro; Eureka, Northern California.

Q. And San Diego?

A. San Diego, yes, sir.

Q. Do you go as far south as the Isthmus?

A. No, sir.

Q. You stop at Mexican ports, do you?

A. We stop at Mexican ports. Mazatlan is our most southerly port.

Q. Do you remember the rate war between Portland and San Francisco that has been mentioned here by some of the witnesses, which occurred some years ago?

A. I remember there were cut rates in effect, some years ago, to Portland.

Q. Did your company at that time run boats to Portland?

A. We had a boat operating there, really under the management of the Oregon Railroad & Navigation Company, so far as traffic was concerned.

Q. That is what I want to get at. How long did they have the management of that boat?

A. Oh, over ten years, I think, to my recollection.

4934 Q. What was the name of her?

A. "State of California."

Q. Was she an extra boat, in addition to the two boats you have spoken of?

A. She was one of the two.

Q. She was one of the two boats. At the same time they had some extra boats, hadn't they? Or don't you know about that?

A. I don't think they ran more than two regularly.

Q. No, not regularly, but do you know whether they had extra boats, or don't you remember about that?

A. I don't recall that they had.

Q. Do you remember what rate was made in that rate war, between here and Portland?

A. You mean by the steamship company?

Q. Yes, steam and rail both.

A. I think the rail rates were cut to 12½ cents, possibly 10 cents; I am not sure which.

Q. I didn't hear the answer.

A. I think the rail rates were cut to 12½ cents a hundred, possibly 10 cents.

Q. What effect did that have on rates generally between here and Portland and Puget Sound points?

A. At the same time there was rather a demoralization in ocean rates to Puget Sound. The Pacific Coast Steamship Company were cutting rates on occasional steamers against steam schooners, and it did not affect the rates to Puget Sound really at all, excepting on interior business; that is my recollection.

Q. That is what I wanted to bring out.

A. On interior business, of course, the Puget Sound lines, that is, the lines operating via Seattle and Tacoma, had to equalize the rates via Portland.

Q. And your company had to participate in that effort to equalize the rates?

A. Yes.

4935 Q. And how long did that condition continue, if you remember?

A. I think it continued during the year 1905 and perhaps during a portion of the next following year, 1906.

Q. You said 1905.

A. 1895 I should have said.

Q. Has any trans-continental freight moved by your line in connection with the Puget Sound lines? I am not speaking now of the Canadian Pacific (I will come to that in a minute), but in connection with the Great Northern and the Northern Pacific.

A. Yes, sir.

Q. From what territory?

A. Principally the middle west.

Q. By middle west, exactly what do you mean?

A. Chicago territory and the—well, largely from points on the lines of the Great Northern and Northern Pacific.

Q. And also from Chicago territory?

A. Some; to a limited extent.

Q. Did they ever move any traffic from Pittsburg and vicinity over your line in connection with those boats?

A. Perhaps an occasional car, but to a very limited extent.

Q. Where did you take that traffic?

A. From the Northern Pacific at Tacoma and the Great Northern at Seattle.

Q. You have never made Portland, have you, on your San Francisco route, under your own management?

A. No, sir.

Q. Do you remember of the fact that several years ago the Canadian Pacific had a differential rate in here to San Francisco?

A. Yes, sir.

Q. Were you with the Pacific Coast Steamship Company during all or most of that time?

A. For quite a number of years while that rate was in effect.

4936 Q. What was the extent of the business that moved in here from the east over the Canadian Pacific and the Pacific Coast Steamship Company while that differential was in force?

A. They carried quite a tonnage of transcontinental freight during that time.

Q. You say quite a tonnage. Just what do you mean by that, if you can tell?

A. I should think that perhaps it averaged 300 tons or so every five days, every steamer.

Q. And what classes of goods?

A. Miscellaneous merchandise.

Q. Originating where?

A. Practically everywhere east.

Q. Everywhere east of the Missouri River, you mean?

A. Yes.

Q. How often did your ships sail from Vancouver at that time?

A. Every five days.

Q. You took the traffic from there, did you?

A. From Vancouver.

Q. Does your line participate in business from San Francisco to Montana points?

A. Yes, sir.

Q. In connection with what roads?

A. The Northern Pacific and Great Northern.

Q. How long have you been interested in that business?

A. Oh, possibly 15 years or longer; ever since those two lines have been handling it.

Q. What lines are your competitors for that business?

A. The Southern Pacific via Ogden, that is, the lines via Ogden, and the O. R. & N. line; that is, the Portland gateway.

Q. And how does the traffic move and how has it moved by
4937 the Portland gateway—boat and rail, or all rail, from here to Portland?

A. Boat-and-rail and all-rail, both.

Q. Is that a class of business that has been solicited here all these years?

A. Yes, sir.

Q. By all these lines. Do you solicit it?

A. We do now; yes, sir.

Q. The Great Northern and Northern Pacific have representatives here in the city?

A. Yes, sir.

Q. Do they have anything to do with that solicitation?

A. Oh, yes; they actively solicit.

Q. Which way would you say most of that traffic moves at the present time, as between the Portland gateway and the Ogden gateway?

A. Of course that is merely guesswork, as we have no information as to what moves via the Ogden gateway; but I should assume probably more via the Ogden gateway.

Q. Do you operate or have you at any time operated in connection with the Panama route on eastern business?

A. We carry their freight from San Francisco to Puget Sound.

Q. How long have you been doing that?

A. Oh, a great many years.

Q. How does the quantity of freight moving by the Panama route at the present time compare with what it was, say, ten years ago?

A. There has been quite a decrease.

Cross-examination by Mr. LOVETT:

Q. How do you account for that decrease, Mr. Cooper?

A. The American-Hawaiian steamers, of course, have taken it.

4938 Q. You attribute it to the work of the American-Hawaiian Steamship line?

A. Largely, yes, sir.

Q. And what other factor, if any?

A. Oh, I don't know of any other particular factor, or any other factor at all, that is, during the last——

Q. Is it due to any extent to greater activity and better service of the all-rail lines?

A. It may be that the direct lines are taking more of it.

Q. How many ships does your company operate between San Francisco and Puget Sound?

A. At the present time four.

Q. How often do they sail?

A. Twice a week.

Q. What is the capacity of those ships?

A. The ships now running, the two larger ones, 2500 tons weight or measurement; the two smaller ones, about 2200 and about 1800. 2500 for two and 2200 and about 1800.

Q. How long does it take to make the trip?

A. On the larger steamers we are making it now in about 55 hours.

Q. And as to the other steamers?

A. About 65 to 68.

Q. How does the present service compare with the service during, say, the past 8 or 9 years, say since 1900?

A. We have one more steamer regularly running. I am speaking of course of passenger and freight steamers. One more steamer regularly scheduled and regularly running than we have had, until recently.

Q. My inquiry has reference more to freight business than passenger business.

A. We handle it in the same steamers.

4939 Q. Have you had extra steamers running in the past?

A. Yes, freighters.

Q. I believe you testified on your direct-examination that in connection with the Great Northern and the Northern Pacific you handled what was called transcontinental freight on those boats. I understood you to say that the traffic originated principally along the lines of the Great Northern and Northern Pacific. That is correct, is it?

A. Yes.

Q. That which originates in Chicago territory is limited?

A. Yes, the territory east of the terminal of those lines.

Q. You mean a limited extent?

A. A very limited extent.

Q. Do you get any from what is known as seaboard territory, east of Buffalo and Pittsburg?

A. We may get an occasional car, but it is very seldom we get a car.

Q. It is very seldom you get any at all from the seaboard territory?

A. Yes, sir.

Q. And only to a very limited extent from points east of the eastern termini of the Northern Pacific and Great Northern?

A. At present, yes. During the rush here, a few years ago, we handled more, because the direct lines were hardly able to take care of it temporarily, after the fire, after the earthquake.

Q. Do you mean the congestion following the earthquake and fire here?

A. Yes, sir.

Q. But under normal conditions you handled a very small amount from points east of the eastern termini of the Great Northern and the Northern Pacific?

A. Yes, sir.

4940 Q. How many steam schooners were operating between San Francisco and Tacoma and Seattle and Portland? Do you happen to know?

A. At the present time?

Q. Yes.

A. Oh, there are half a dozen regularly running.

Q. Do they all carry freight in competition with the Pacific Coast Steamship Company and the O. R. & N. boat-line?

A. At the present time they do more than when lumber rates were high. When lumber rates are low they are more active in soliciting north-bound freight.

Q. They always take north-bound freight in preference?

A. They always take some north-bound freight.

Q. All they can get?

A. Oh, yes, all they can get. They are more active when lumber cargoes are scarcer and rates lower.

Q. The rate war that you were asked about, that occurred in 1895 or 1896, was started by the boat lines, wasn't it; that is, as between the O. R. & N. boats and the steam schooners?

A. I am not clear as to the origin of it or as to the reasons for the reduction in the rail rates at that time.

Q. I am not asking about the rail rates: I am asking about the water rates particularly. Wasn't there a war on between the O. R. & N. boats and the steam schooners, in 1895 or 1896, that led to very low rates and what was denominated as the rate war?

A. My recollection is that the boat line was cutting its rate—the boat-line to Portland, as our line was to Seattle, if my recollection is correct, on certain steamers, steamers that sailed in competition with the more regular competing steamers.

4941 Q. I understood you to testify on your direct-examination that the steam schooners cut the rates to Puget Sound and that led to a reduction of the rates by the Pacific Coast Steamship Company to Puget Sound.

A. At that time there were three or four steam schooners regularly running under one management, and that line made quite low rates, and my recollection is that our company was making a low rate in competition with those steamers, on the particular sailings that were competitive with them.

Q. That is, between San Francisco and Puget Sound?

A. And Seattle, yes.

Q. Seattle, yes.

A. And Tacoma.

Q. What about the North Pacific Steamship Company? What is that?

A. That is the line controlled by Mr. Dowe—Dowe & Company.

Q. That is a line of steam schooners, isn't it?

A. No, the line operates passenger and freight steamers.

Q. Where?

A. Between San Pedro and San Francisco and Portland, and between San Francisco and Eureka: I think one steamer running between Eureka and Portland.

Q. How many steamers does it operate?

A. At the present time I think three.

Q. How long has it been operating?

A. It has been operating between here and Eureka for a number of years, and between San Francisco and Portland and Southern California and Portland I think about four or five years.

Q. At least four or five years, hasn't it?

4942 A. I think so, yes.

Q. It has been actively soliciting freight in those points?

A. Yes, sir.

Q. Are there other steamers operating between San Francisco and Portland, steam schooners?

A. Oh, yes; steam schooners going up there to bring down lumber.

Q. Those steam schooners have been operating regularly and actively between San Francisco and Portland for a great many years, haven't they?

A. Yes, for many years they have been going to the Columbia River.

Q. In 1901 they were operating there too, weren't they?

A. Yes.

Q. There has been no material change in the rates by the water lines since 1901 as compared with what they were before, between San Francisco and Portland, has there?

A. I think the rates have been somewhat advanced during the last year or two.

Q. Rates on what?

A. Well, the tariff has been changed between here and Portland, I think, since the line has been under the steamer management exclusively—since the management of the steamer line was separated from the management of the rail—the O. R. & N.

Q. How about the steam schooners and the North Pacific Steamship Company competing there? Don't they practically fix the rate for the water line between San Francisco and Portland?

A. While they cut the rates, I don't think they have—for some years anyway; they have fixed the rates—cut the rates on individual articles.

4943 Q. How much tonnage do they carry, do you know?

A. You mean north-bound to Portland?

Q. Yes. I am speaking of the steam schooners and the North Pacific steamships.

A. From San Francisco the tonnage to Portland is not particularly heavy. I shouldn't think the steam schooners would carry of merchandise very large quantities. I can't give the exact tonnage.

Q. What percentage of it would you say?

A. If you include cement and those articles, salt and articles like that, I think they probably carry 40 or 50. Of course that is purely guesswork.

Q. You don't know?

A. No, I do not.

Q. In your direct examination you were asked about the service formerly maintained by the O. R. & N. boat line from San Francisco as compared with the present service. I believe you said that the O. R. & N. formerly operated two boats, five-days service, and now two boats on seven-days service.

A. Yes.

Q. During what period did you mean, or what time did you mean by "formerly"?

A. I think they have been operating seven-days service only during the last two years, possibly.

Q. They operated a five-days service up to that time?

A. That is my recollection.

Q. Now, prior to 1901 they operated two boats. Do you remember their names?

A. Prior to the withdrawal of our steamer they were operating the "Columbia" and the "State of California."

Q. When was your steamer withdrawn?

4944 A. My recollection is it was about 1899 or 1900.

Q. That was the "State of California"?

A. Yes.

Q. And you say they had been operating that for about ten years?

A. I think so.

Q. What steamer took her place, do you know?

A. I am not entirely clear as to that. It may have been the "Oregon." I think at one time they were operating the "Columbia," "Oregon," and "State of California." I am not entirely clear whether they were operating three steamers at that time, or just what the schedule was.

Q. So, as you recollect, up to 1901, or a good many years prior to 1901, of the two regular steamers operated into Portland under the management of the O. R. & N., one was Pacific Coast Steamship Company—that is, the "State of California"?

A. The "State of California."

Q. And the other was owned by the O. R. & N., as you understand it?

A. By the O. R. & N.

By Mr. DUNNE:

Q. Can you tell us how long the Canadian Pacific was handling San Francisco business on a differential?

A. I don't remember the number of years. I think those differentials were withdrawn in 1898. Five or six years, during my connection with the Pacific Coast Steamship, prior to 1898.

Q. What, in a general way, was the extent of the differential?

A. For a few years, latterly, a few years before 1898, it was 10 percent: 10 percent off the rail rates.

Q. And how did the volume of business carried by the

4945 Canadian Pacific, handled into San Francisco under the differential, compare with the total tonnage moving into San Francisco on the rail lines?

A. Oh, the bulk of the business must have moved by the direct lines.

Q. It was an inconsiderable portion of the business, was it not, relatively speaking?

A. It is hard to say just what the percentage was, but I should say it certainly was a small portion of the business.

Q. After the differential was withdrawn, what became of the Canadian Pacific business into San Francisco?

A. It commenced to decline until it——

Q. ——reached the vanishing point,—did it?

A. Well, we are still handling a little, but it is infinitesimal compared with what we were handling when the differential was in effect.

Q. With reference to this Montana business. Do I understand you that prior to 1901, business moved into Montana by way of Portland and the O. R. & N. rail lines, going east? That was one way in which it could have moved, wasn't it?

A. Yes.

Q. We might call that the Portland gateway, might we not, by way of distinction?

A. Yes, sir.

Q. Did business to Montana points also move along the Southern Pacific line from San Francisco to Ogden and thence from Ogden to Montana points?

A. That is my understanding.

Q. Over what rails did that business have to pass after it left Ogden to reach Montana points?

A. To reach Butte, over the Oregon Short Line.

Q. Now, you have said "to reach Butte." To reach any
4946 Montana point?

A. It had to pass over the Oregon Short Line up to Butte.

By Mr. SEVERANCE:

Q. Did business also move through the Portland gateway, Southern Pacific and Northern Pacific, to some extent into Montana?

A. To a large extent, yes.

4947 A. A. WATKINS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Watkins, what is your business?

A. Stoves, ranges, tinware, plumbing goods, mantels, grates, and tiling.

Q. What is the name of the company with which you are connected?

A. W. W. Montague & Company.

Q. Is that a wholesale establishment?

A. It is.

Q. How many years have you been connected with them?

A. Forty-five.

Q. And what is your position with the company?

A. Vice-president.

Q. Have you had knowledge of the routing of your traffic for a good many years?

A. I have.

Q. Where does the traffic that you get in from the East mostly originate? In what parts of the east does it originate?

A. I didn't understand the question.

Q. I say in what parts of the east does the traffic which you bring in from that region, originate?

A. Various points; New York, Boston, Philadelphia, Pittsburg, Cincinnati, Chicago, Milwaukee, Louisville.

Q. Has that been the case for a good many years?

A. It has.

Q. That it originated at various points?

A. Yes.

Q. How has your freight moved from these various points
4948 in the east for the last fifteen or twenty years?

A. By rail and water.

Q. By what rail lines, what transcontinental lines?

A. Southern Pacific, Union Pacific, Santa Fe.

Q. And by what water lines?

A. Prior to the fire, some by the Panama, and since the fire, some by the American-Hawaiian.

Q. When your freight moved by the Southern Pacific, as you have said, from the Atlantic seaboard territory, how was it brought out—by the Sunset-Gulf?

A. A little louder, please. I am a little hard of hearing.

Q. You spoke of some of your traffic coming Southern Pacific, some Santa Fe, some Union Pacific. When traffic from the Atlantic seaboard came Southern Pacific, what was its route? That is, was it all-rail or was it rail and water?

A. Both; we shipped a portion all-rail and a portion by the Sunset Route.

Q. Did the Southern Pacific bring any of your traffic in from Pittsburg and that vicinity? If so, through what gateway?

A. Principally by the Sunset Route.

Q. All-rail?

A. Rail and water.

Q. West of the point where the rail rates to the seaboard are absorbed by the Sunset Route, did your traffic, any of it, move by New Orleans all-rail?

A. A small portion.

Q. From what territory?

A. Pittsburg, Wheeling.

Q. What class of traffic?
A. Sheet-iron.
Q. You said that up to the time of the fire you had used the Panama Route.
A. To some extent.
4949 Q. What time did the Panama route make between New York and San Francisco?
A. Approximately thirty days.
Q. What is the time by the Sunset Route and the Southern Pacific?
A. About twenty days.
Q. What is it all-rail?
A. About the same—twenty days.
Q. What was the character of the service by the Panama route when you were shipping that way?
A. Very unsatisfactory.
Q. For what reason?
A. Damage to the goods.
Q. What is the character of the American-Hawaiian service?
A. Very good.
Q. You don't meet with this same difficulty of having your goods come in damaged?
A. Not to the same extent.
Q. Are your goods of a character that can be conveniently handled by rail and water?
A. A large portion of them, no, such as stoves and goods of that character; they will not bear the transportation by the Panama route, water and rail. It is so roughly handled that they break them. We have had to discontinue. We haven't shipped since the fire by that route.
Q. Have you shipped stoves since that time by the American-Hawaiian route?
A. We have not.
Q. You ship those entirely by rail?
A. Via all-rail.
Q. Into what territory do you distribute your goods?
A. California, Nevada and Arizona.
(No cross-examination.)

4950 C. M. GOODALL.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Captain Goodall, what is your business?
A. A member of the firm of Goodall, Perkins & Company, merchants.

Q. Have you been in the steamship business?

A. Yes, sir.

Q. When?

A. I personally, was master of the Pacific Coast Steamship Company for many years, and the firm of Goodall, Perkins & Company were the general agents of the Pacific Coast Steamship Company, and also had superintendence of the Oregon Railroad & Navigation Company's ocean division.

Q. How long ago were Goodall, Perkins & Company connected with the Oregon Railroad & Navigation Company?

A. I think it was about 1882; about 1882 they became the superintendents of the ocean division.

Q. And how long did that continue?

A. It continued up until the Pacific Coast Steamship Company withdrew their boat from the Portland route, about 1900, I think.

Q. Is that the "State of California?"

A. The "State of California."

Q. The boat that was mentioned by another witness?

A. Yes.

Q. How many ships did the O. R. & N. Company formerly run between here and Portland?

A. Well, how far back?

Q. You can go back as far as you like, Captain, and work up.

A. When the Pacific Coast Steamship Company first went
4951 on the route (that was in 1877) the O. R. & N., at least the Oregon Steamship Company, which was the predecessor of the O. R. & N., was operating two ships and the Pacific Coast Steamship Company was operating one. That is the time the opposition ceased. We ran one ship while the O. R. & N. ran two. And that continued. They built larger ships. They still continued to run three ships until just previous to what they call the opening of the Northern Pacific. That was when the Oregon Railroad & Navigation Company made connection with the Northern Pacific and made a thorough transcontinental line to Portland. I think about a year or two before that, or just after that occurred, we were obliged to run four ships; the Pacific Coast Steamship ran two and the Oregon Railroad & Navigation ran two. Shortly after the road was opened, the business fell off, so it dropped back to three ships—one Pacific Coast and two O. R. & N., and as the business kept getting worse they dropped to two ships—one Pacific Coast and one O. R. & N., and continued that way up until the time we withdrew altogether.

Q. And when you withdrew your ship the O. R. & N. put on another ship in the place of it?

A. Yes, sir.

Q. There has been some testimony with reference to certain steam schooners running between here and Portland and between here and Puget Sound points. Are you familiar with those boats?

A. Somewhat familiar, yes.

Q. What was their tonnage, as a rule?

A. They have been increasing their tonnage. Their capacity is according to about how many thousand or hundred thousand feet of lumber they can carry. They are vessels of a single hold, which
4952 would be limited to merchandise, carrying about two-thirds of their cargo on deck, which is lumber. But you could not very well load them to their capacity with merchandise unless you put a deck-load of it on.

Q. Could you give an idea of about their average capacity as merchandise loaders, say by measurement?

A. Of course they have been increasing the size of them in the last few years quite rapidly. I suppose eight or ten years ago they would perhaps carry 500 or 600 tons under decks.

Q. Under the decks?

A. Under the decks.

Q. Did those steam schooners have divisions in with the railroads, or did they simply take commodities to the port?

A. Just took the commodities to the ports.

Q. Take the traffic moving from here over the O. R. & N. boats. I suppose you were quite familiar with that at the time you were their agent?

A. Somewhat, yes, sir.

Q. What percentage of that traffic would you say was local to Portland and what percentage moved beyond Portland?

A. I should say that 75 per cent of it was for Portland locally; 25 per cent beyond.

Q. Are you connected with any steamship company now?

A. I am only a director of the Pacific Coast Steamship Company. That is the only connection I have there since we retired from the management of it; I think it was in 1902.

Q. Well, aren't you connected with a line of boats running to Coos Bay or Eureka?

A. Yes; we control the Oregon Coal & Navigation Company, which runs one steamer from here to Coos Bay only.

4953 Q. What kind of traffic is that boat engaged in?

A. Merchandise up and coal back.

Q. You don't bring down any lumber?

A. Well, if we can get it. Of course we have a coal mine. We bring our own coal and dispose of it, and bring a little lumber occasionally, and produce.

Q. You own a mine of your own up there?

A. Yes, sir.

Q. You are coal merchants?

A. Yes, sir.

Q. And you load what merchandise you get going up?

A. Yes, merchandise and passengers.

Q. The Southern Pacific have boats running or one boat running up from here, haven't they—formerly a Spreckels boat?

A. They have one running here that is not a passenger boat, and runs very irregularly—the "Czarina." The other boat that did run on the line is now running from Portland to Coos Bay.

Q. That was the passenger boat?

A. Yes.

Q. That takes passengers in to Portland?

A. Yes, sir.

Q. Were you engaged in the passenger business between here and Coos Bay at the same time that the Southern Pacific boat was carrying passengers up here?

A. Yes, sir, we were.

Q. How long have you been running your boat?

A. This boat—running boats, you mean?

Q. Yes.

A. I think we bought the line and the boats somewhere about thirteen years ago.

Q. Been running ever since?

A. Yes.

Q. How are the rates made on merchandise from here to Coos Bay?

4954 A. We simply took what was established as the rate when we first began operating there, and practically held those rates ever since.

Q. And the Southern Pacific make the same rates that you do?

A. I suppose they do, yes.

Q. That is your understanding, isn't it?

A. That is the understanding. Of course we operate entirely as a coal proposition; so that we are like the steam schooners that are going after lumber. What we take up in passengers and merchandise is just that much gained. We are not depending for a living on the merchandise.

Q. Do you run any boats into Portland now?

A. No, sir.

Q. You say you are still connected with the Pacific Coast Steamship Company?

A. Simply as a director.

Q. You have no intimate knowledge of the business?

A. None whatever, no.

Q. At the time you were managing that business, was there much tonnage moving from the east to San Francisco over the rail lines to Puget Sound and thence down over your boat?

A. Yes, at times a good deal; that is, at the time the differential was on with the Canadian Pacific.

Q. What would you say as to the extent of the business moving under that differential?

A. Compared to the tonnage that a city of this size should have, I should say that it was very small.

Q. Could you give an idea in tons?

A. No, I could not. You mean the amount that we carried?

Q. Yes, per trip.

4955 A. It is pretty hard to get at. We were carrying by weight; generally got bulky stuff.

Q. Did you participate in the through rate by way of a division, or did they simply buy space in your boats?

A. By a division.

Q. A division of the through rate?

A. Yes, sir.

Q. What classes of traffic moved that way—all classes?

A. Well, they seemed to be inclined to ship all the bulky goods, such as hops——

Q. That is the way it struck you?

A. Yes. They would bring these big furniture cars full of hops, and they fill a ship up pretty fast.

Q. They moved hops that way, did they?

A. They did.

Q. Millinery of all kinds?

A. Well, a good many: all kinds of light stuff. There was some iron came there. Of course we limited them in heavy goods over a certain weight. We wouldn't take them except under special contract, because it required special gear to lift it off the cars and stow it in the ships: but the bulk of the stuff was generally light merchandise, bulky merchandise.

Q. It was high-class, then: the rates were high?

A. It may have been high-class so far as the railroad was concerned, but our cubic capacity couldn't carry it.

Q. You know how goods are classified for rail shipment?

A. Yes. They naturally took a high-class freight, but I think the bulk offset the class as a general thing.

Q. I suppose that is taken into account when rates are made?

A. Yes. The difference in the steamer was that we could not
4956 manufacture a furniture car out of it. The capacity was not like that of a furniture car, an ordinary box car. We had only just so much cubic capacity.

Q. The traffic, then, that moved was in part at least high-class traffic?

A. High-class, yes.

Q. And you also brought steel products that way?

A. Yes. There were considerable iron, plates, different products of iron.

Q. You didn't complain of their weight, did you?

A. No.

Q. Do you remember how many years that traffic was going on?

A. No, I do not. It was quite a number of years.

Q. Did you happen to know what effect that had on rates generally, transcontinental rates?

A. No.

Q. You didn't meet with that?

A. No.

(No cross-examination.)

4957 H. M. McCARTNEY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. McCartney, where do you live?

A. I reside in Berkeley, but my office is in San Francisco.

Q. What is your position at the present time?

A. I am principal assistant engineer of the Western Pacific Railway.

Q. Now under construction?

A. Yes, sir.

Q. What is your profession?

A. Civil engineer.

Q. How long have you been in that business?

A. Since 1865.

Q. Did you ever have any connection with the laying out or construction of any portion of what now constitutes the San Pedro, Los Angeles & Salt Lake Railroad?

A. Yes, sir. On what now constitutes that road I have been connected with three surveys, under three different companies.

Q. I wish you would commence with the first, and state in detail about those surveys, where they ran, the name of the company for which you made them, or the individuals (if you do not know the corporate name), and give the dates as nearly as you can.

A. The first survey was in 1889 and 1890 for the Oregon Short Line and Utah Northern Railway Company. These surveys began at Milford, Utah, and extended to the Nevada-California state
4958 line. There were some other surveys into California, but my remembrance is that they were not what we call final location.

Q. In California?

A. Into California: yes, sir. The line was finally located all through Nevada to the California-Nevada state line, and the surveys extended into California, but without consulting old note-books I could hardly tell you whether that was final location in there. I remember making the filing map all the way through Nevada. This survey was followed by construction which began about January 1, 1890, and continued until October 14, 1890. During that time the greater portion of 115 miles from Milford, Utah, to Caliente, Nevada, was graded and track-laying had begun at Milford. 7¾ miles of track were laid of which 3½ miles were finally surfaced. In addition to the grading from Milford to Caliente, a 30-mile branch from Caliente to Pioche was partially graded, but no track was laid thereon. On October 14, 1890, I received orders to stop all work south of Milford, and this was accordingly done. This 7¾ miles of track was subsequently pulled up.

Q. How long afterwards?

A. I do not know the date, nor by whose orders it was pulled up. I never saw this grade again until 1896. At that time the track had disappeared.

Q. When you saw that grade again in 1896, what was its condition?

A. The track, as I said, had disappeared. The condition of the grading was good. I went over the whole of it in 1896, the 115 miles to Caliente, and the greater portion of the branch to Pioche. The grading remained in exceptionally good condition considering the lapse of time.

4959 Q. In connection with what business were you down there in 1896?

A. In 1896 a company was organized in Salt Lake City, called the Utah & California Railway (or Railroad). This company desired to build a road from Utah to California, and I was appointed as chief engineer.

Q. Who were the gentlemen interested in that company?

A. If it is permissible to read, sir——

Q. That is all right.

A. In looking over some old papers last night, I discovered one of the letterheads of the old company. I didn't know that I had it. George Q. Cannon was president; he is of Salt Lake City; Theodore F. Meyer, of St. Louis, first vice-president; Allen G. Campbell, of Salt Lake City, second vice-president; Abraham H. Cannon, of Salt Lake City, secretary and treasurer, all these being directors. The seven other directors were: Wilford Woodruff, of Salt Lake City; John Dern, of Salt Lake City; John M. Allen, of St. Louis; H. A. Coven, of Salt Lake City; Joseph F. Smith, of Salt Lake City; W. S. McCornick, of Salt Lake City; Robert C. Lund, of St. George, Utah.

Q. Those gentlemen were the projectors of this proposed line?

A. Yes, sir.

Q. What did you do after being appointed chief engineer of that company?

A. The first thing I did, by direction of President Cannon, was to go to Omaha to interview the receivers of the Union Pacific. On March 9th I had a talk with Mr. S. H. H. Clark, and presented him a letter from Mr. George Q. Cannon. I told him that this new 4960 company desired to make a survey from the end of the Oregon Short Line track, at Milford, over the old grading, which had not been used, and wished to know whether they were friendly to the enterprise and would furnish us with maps and notes. He told me he would be obliged to consult the other receivers; and on my return in the afternoon he said that the proposition was acceptable, and took me to Mr. George H. Pegrin, then chief engineer of the Union Pacific, and gave him instructions to furnish me with copies of such maps, profiles and notes as I desired. I stayed in Omaha several days and made out a list of what I wished to have, and these papers were sent to me at Salt Lake City by Mr. William Critzer,

then chief clerk of the engineering department. The delivery of the papers extended over or about three months, and the bills for these were paid by the Utah & California Railway. On my return to Salt Lake City I organized a survey party, and made a survey over this old grade from Milford, Utah, to Caliente, Nevada, and also over the branch line to Pioche, and these maps were filed by the Utah & California Railway. No construction work was done, and in August, 1896, I received orders to stop the survey work. This enterprise was abandoned. In 1901——

Q. Did you change that survey in any way from what it was?

A. Sir?

Q. Did you change your survey in any way?

A. No, sir. The survey was practically the same as the Oregon Short Line route: it followed the old grade.

Q. That was in 1896?

A. In 1896, yes, sir.

Q. When did you next have anything to do with the survey
4961 in that region?

A. In 1901, on March 26th, I started a survey from the place where this old grade crossed the Utah-Nevada line, which is about 75 miles from Milford.

Q. Had the track been laid down as far as the state line?

A. Yes, sir.

Q. That town is called Uvada, isn't it?

A. Yes; there was a little station there called Uvada.

Q. Go ahead.

A. At this time the track had been laid to Uvada, which is a short distance east of the Nevada line; in other words, all this track was in Utah and none of it in Nevada. I started this survey as first engineer of the San Pedro, Los Angeles & Salt Lake road, having been instructed that the directors had ordered a survey.

Q. Who employed you?

A. I was employed by Mr. J. Ross Clark. I had previously done some work among the old papers of the Utah-California, under employment of Mr. C. O. Whittemore, of Salt Lake City.

Q. What was Mr. Whittemore's relation to the Clark road?

A. He was connected with their legal department.

Q. He was their attorney in Salt Lake, wasn't he?

A. I think that was his title, yes, sir.

Q. How long previously had you been looking up these records at the request of Mr. Whittemore?

A. I think I started to look them up about January 1st. I was in Salt Lake City and Mr. Whittemore had interviewed me and asked me if I knew about the old survey and what had become of the papers.

Mr. Dunne. January 1st of what year?

Witness. Of 1901.

4962 Q. Did you find the old surveys that you had?

A. Mr. Whittemore found the papers; I did not find them. The first I saw of them, they were in the office of an electric company there.

Mr. KELLY. Utah Light & Power Company?

WITNESS. I think that was the title. I am not positive about that, Judge. I know it was a company in which several of the directors of the Utah & California had been interested. I started this survey on March 26th, 1901, over the old grade, and reached Caliente on April 2d. I then turned the survey up the old grade toward Pioche, and reached the head of Condor Canyon, which is out in the open country, on April 7th. On April 8th I started the survey down the Meadow Valley from Caliente, there being no grading at that time south of Caliente. This survey was continued until July 10th, when it reached the Nevada-California state line. Now as regards construction: after I had left Uvada, construction was started along the old grade but not by myself. The effort was made to patch up some grading which had been damaged, and finish some incomplete grading.

Q. By your company?

A. By our company, but not under my personal charge. I had nothing to do with any of the construction work on the forty miles from Uvada to——

Q. Who had charge of that?

A. My remembrance is that this work started under Charles O. Whittemore, the attorney mentioned, and that afterward Mr. Virgil Kelly, of Fillmore, Utah, was put in charge. The men furnishing the teams and workmen were a contracting firm from Spring-
4963 ville, Utah, called Deal & Mendenhall. There was also a man named Adam Paul, of Salt Lake City, who had something to do with this. The Oregon Short Line contested this work and the matter was thrown into court, resulting, as I remember it, in a decision at Carson, Nevada, that the San Pedro, Los Angeles & Salt Lake had no rights there, and their grading forces were withdrawn. I was then ordered to make a survey through some other pass, so as to get over the rim of Salt Lake Basin, without touching any of this old grade, and a line was located through a pass called Miller's Springs, practically adjoining what are now the stations of Modena and Caliente. Very little grading was done on this line, all of it in the vicinity of Caliente.

Q. Is that north or south of Caliente you are just speaking of?

A. The line is north of Caliente, and whatever grading was done was done north of Caliente.

Q. That did not go through the Meadow Valley?

A. No, sir.

Q. But around it?

A. By way of explanation: the old grading which was done, was on one of the forks of Meadow Valley, which is known there locally as Clover Valley, and the Miller Springs line did not touch Clover Valley but came over the pass and came down into Meadow Valley just at Caliente. It might be called a side hill line, you know, versus a drainage line, the old one following down the waters of Clover

Valley, while this one went over the side hills. After the location had been started from Caliente southward down the Meadow Valley, construction work was commenced at Caliente, on May 6, 1901. On May 14th another camp was put in, fourteen miles south
4964 of Caliente. On May 23d a contract for 60 miles southward from Caliente was let to Deal & Mendenhall, of Springville, Utah, and their forces were scattered at various places over this 60 miles. All this work was stopped on November 9, 1901.

Q. How much grading or construction work had been done up to November 9, 1901, by this firm?

A. I do not remember exactly. It ran into tens of thousands of dollars.

Q. What class of work was it—grading?

A. Altogether grading. No trestles had been built and no track had been laid. On November 5th, 6th and 7th there was a conference at Salt Lake City between the representatives of the Oregon Short Line and the San Pedro road, in which the matter was discussed of making a joint survey from Caliente southward as far as Bird Springs Summit.

Q. What place?

A. Bird Springs Summit, in the vicinity of the Nevada-California line, the idea being that each company should peaceably build its own line through the canyon portion, and it was after this conference that the order to stop work was given. A joint survey was started about November 15th, and was carried on, as I remember it, to completion, each party locating its own line, and by agreement not coming within 20 feet of the line of the other party. The San Pedro Railroad took the righthand side of the canyon, going south, and the Oregon Short Line the lefthand side. This joint survey was completed sometime in the spring of 1902, and some time later in the year, at a date which I cannot accurately fix, I received orders to disregard both
4965 of these lines and put in a final location for the San Pedro on the best line the country afforded. This was done and a grading contract let to the Utah Construction Company, and this line was graded and the track laid on it.

(A recess was here taken until 2 o'clock p. m.)

Q. Where did that line run through the Meadow Valley Wash with reference to these two lines that had been surveyed under the joint survey?

A. It entirely disregarded both of the lines and ran across them and on them and any place wherever the best ground was afforded.

Q. What change did you make in the line across the desert? You said you had already surveyed as far as the Nevada-California line. When you made this new survey did you change that route?

A. That didn't come under my management. That was handled from the office of the chief engineer in Los Angeles.

Q. How far did your work extend?

A. To the Nevada-California line at that time.

Q. Well, that is what I am speaking of.

A. Yes, sir.

Q. That is what I am asking. You stated that a survey was made by the San Pedro clear across to the California and Nevada line.

A. Yes, sir.

Q. Now, this survey made under this joint arrangement: as I understand it, the two surveys only extended through the Meadow Valley Wash; is that true?

A. No, sir, it extended to a place named Bird Springs Pass, which is in the vicinity of the California line but in Nevada.

4966 Q. There were two surveys clear up to that point?

A. Yes, sir.

Q. That is across the desert?

A. Yes, sir; it is all desert in that country.

Q. After you came across the canyon, that was in the open country?

A. Yes, sir.

Q. When the San Pedro road was constructed, was it constructed along the survey that had been made by itself at the time the joint survey was made?

A. No, sir; both of the joint survey lines were disregarded.

Q. On the desert as well as in the canyon?

A. Yes, sir.

Q. What change was made and how great a change was made after you got out of the canyon?

Q. Why, nothing more remarkable that I know of. The maps on file in the San Pedro engineers' office will show.

Q. Did you move the line to one side any great distance?

A. No, sir, no very great distance.

Q. But you did not occupy either the survey across the desert made by the San Pedro or the one made by the Short Line?

A. Neither one.

Q. Except in places?

A. Yes, sir.

Q. Will you state just the extent of the construction work outside of surveying that was done by the San Pedro line previous to the time that you received the orders to survey a new line, disregarding these two surveys?

A. I could not give it to you exactly, but it will all be shown in the final voucher paid to Deal & Mendenhall.

4967 Q. I don't suppose you can give it with accuracy, but will you give us the best you can? I don't mean the construction in California but the construction in Nevada.

A. Yes, sir. My remembrance is that the San Pedro, up to the time that work was stopped, in November, 1901, had spent in the vicinity of $100,000.

Q. Where was that money expended and on what kind of work?

A. It was altogether in grading, and I think that was the expenditure on the 60-mile contract let to Deal & Mendenhall from Caliente southward.

Q. In making this joint survey, was the line that you established a line of definite location?

A. Yes, sir.

Q. At the time you were instructed, in 1902, to make an additional survey, did the Oregon Short Line have surveyors in the field?

A. I think not.

Q. How long before that had they left the field?

A. That I couldn't tell; I can't fix the date of that order.

Q. Can you recall how long that was after you finished the survey to this point near the Nevada and California boundary?

A. No, sir.

Q. Or was it immediately?

A. No, sir, I cannot; I have nothing to remember it.

Q. Do you remember what you were doing in the meantime?

A. Nothing but survey work.

Q. Do you remember where you were doing survey work?

A. For the San Pedro road. We were doing survey work at the Miller's Springs Pass, which is, as I said before, a line to connect Modena with Caliente.

4968 Q. That was the last work you did?

A. That was going on at this time.

Q. Do I understand you correctly that surveying work on the part of the San Pedro was going on practically clear across the state of Nevada at the same time?

A. Yes, sir, and in Utah also.

Q. Now, what work was done in Utah?

A. We started a line out of Salt Lake City to come down and connect at Modena with this Miller's Springs line.

Q. Was that surveyed through?

A. No, sir, it never got through; it didn't get half way down.

Q. When you went down there, in the first place, to survey along the old grade in Nevada to the southwest from Uvada, had the Oregon Short Line a crew of surveyors at work down there?

A. No, sir.

Q. How long after you got there did their surveyors appear?

A. Oh, I saw no one until May.

Q. You started in in March?

A. March 30th.

Q. Where did you see them then?

A. I saw them in the Meadow Valley below Caliente.

Q. What were they doing?

A. They were running lines.

Q. How large a crowd did they have there?

A. I do not remember.

Q. Do you remember of the line that was constructed by Mr. McCune, Mr. Eccles and their associates, 66 miles of road in southern Utah?

A. I was not there at the time they laid the track. I rode over the road afterwards. They laid the track on about 75 miles
4969 of grade which had been made in 1890, in other words, from Milford to Uvada. I never saw this until 1901.

Q. At the time you first saw it, in 1901, was it still run by these gentlemen independently, or had the Oregon Short Line taken it over?

A. The Short Line had not taken it over. It was run by Messrs. Eccles——

Q. It was run by them at the time you went down to commence your survey?

A. Yes, sir.

Q. Do you remember how long after that the Short Line management took possession of it?

A. So far as I know they took possession in April, 1901.

Q. When you went to work on this survey, did you have any old profiles and maps and field-notes that had been made at the time of these previous surveys?

A. Yes, sir. I had the maps and profiles that the Utah & California had used in 1896.

Q. Where did you get them?

A. At that time they were furnished me by Mr. Whittemore.

Q. You don't know where he got them?

A. No, sir.

Q. Were you present at any time when the Short Line men and teams went to work down there, at the same time that Deal and Whittemore were working?

A. No, sir. All that time I was ahead with the surveys.

Q. You didn't see any of the collisions between the respective parties?

A. No, sir, none at all.

Q. Were any of these men that were working along there at that time working under your direction?

A. No, sir.

Q. You were doing survey work?

A. I was ahead with the survey all the time.

4970 Q. Do you remember how long it took you to make that final location of the line on which it was built?

A. No, sir, I do not. I do not remember. It would be a matter of record on the filing maps.

Q. But you don't recall?

A. No, sir. The legend on each filing map states the date at which the survey commenced and was completed.

Q. When did you first learn that a consolidation of interests had taken place between the Short Line and the San Pedro?

A. I presume your question refers to the joint survey?

Q. No, I don't mean that. I mean at the time you first learned that the Short Line were going to turn over to the San Pedro their line in southern Utah and western Nevada and only one line was to be constructed through.

A. I don't think I was ever notified of that at all. The first thing that would lead me to a belief of that kind was the orders received in 1902 to disregard the joint survey of both lines and make an individual survey on which to build the San Pedro.

Q. That was some time in 1902, and you can't fix the date?

A. No, sir, I can't fix it.

Q. But you were not then advised that the Short Line had amalgamated their interests with the San Pedro?

A. No, sir.

Q. When did you first hear it?

A. I don't think I was ever told of the fact at all. I remember reading about it in the papers. Partly conjecture and partly news.

Q. That was the first you knew of it?

A. Yes, sir.

4971 Q. What was done towards securing right-of-way by the San Pedro road previous to this amalgamation or previous to the time you were told to disregard the two surveys and make a new survey?

A. The San Pedro had bought right-of-way through various pieces of land in the Meadow Valley; they had bought none in Utah that I know of, nothing under my charge, and I think that is all. I furnished to the attorneys several maps showing the right-of-way that would be needed on my location. The country, as a rule, was almost uninhabited; very few pieces of land that were under private ownership.

Q. Almost all public lands, were they?

A. Nearly all of it public lands.

Cross-examination by Mr. KELLY:

Q. Mr. McCartney, in fact most of the land through which all of the surveys run was really unsurveyed land of the United States at that time, in 1901, was it not?

A. I should have to get a map, Judge, and look at that before I could commit myself to a positive answer.

Q. Can't I refresh your recollection by calling your attention to the fact that there was unsurveyed land up towards Panaca on the Pioche branch?

A. Yes, sir.

Q. But the rest of it was practically unsurveyed land?

A. No, sir, I don't think that is a fact. For instance, the land at Caliente was surveyed for several miles.

Q. What is the next ranch down below there? I can't think of the name.

A. The name is out of my head, too. It was surveyed for several miles below Caliente.

4972 Q. Below the point where the Delemar mines had their pumping works?

A. Yes, sir.

Q. Now, up beyond that did you survey for a short distance?

A. Yes, sir. Then there was a long stretch of unsurveyed land reaching down to Keans Springs. Then the surveys commenced again and extended all the way to the Moapa River and a short distance beyond. Then, between that and the Vegas there were some fraudulent surveys, and there were some unsurveyed lands, and then the surveys began again and ran all the way through the Vegas Valley. That is a question, Judge, that is very hard to answer offhand, but the filing maps of the survey will answer that question absolutely and accurately.

Q. Under the Act of 1875, the only difference was that the Department, under the recent regulations, would approve the maps as to the surveyed lands and would file them for information only as to unsurveyed lands?

A. Yes, sir.

Q. That is the only difference?

A. That is a fact, yes.

Mr. SEVERANCE. Who was the chief engineer of the road?

WITNESS. Harry Hogwood of Los Angeles.

Mr. SEVERANCE. Is he still in Los Angeles?

WITNESS. Yes, sir.

Q. The first surveys that were made on that line were made in 1889 and 1890?

A. Yes, sir.

Q. At that time you were in the service of the Union Pacific Railway?

A. The Union Pacific, yes, sir.

Q. And reported to the engineer of that road at Omaha?

A. Yes, sir.

4973 Q. The surveys you made extended from Milford southerly and westerly to the Nevada-Utah state line?

A. Yes, sir.

Q. At about the crossing of the line, at a place now known as Uvada or thereabouts?

A. Yes, sir.

Q. You then continued your surveys down through the Clover Valley Wash to the junction with the Meadow Valley?

A. Yes, sir.

Q. To a place now called Caliente?

A. Yes, sir.

Q. Then called Clover Valley Junction?

A. Well, it had several names. It was called on our maps, if you ever refer to them, as Piper Junction at one time.

Q. From there you surveyed a line up towards Pioche, beyond the head of the Condor Canyon?

A. Yes, sir.

Q. All of the surveys thus far made were on behalf of the corporation known then as the Oregon Short Line and Utah Northern Railway Company?

3027

A. Yes, sir.

Q. The filing maps, for filing in the local land offices in Utah and Nevada, were made in the name of that company and by you as its authorized engineer?

A. Yes, sir, I made the maps and gave the facts on which Mr. Bogue signed them.

Q. Those maps, however, were made up by you personally?

A. Yes, sir, in Salt Lake City.

Q. You also continued that line by surveys from Caliente—I shall call it Caliente all the way through to avoid mixing it up, although it was then Clover Valley—you continued the surveys from Caliente to the Nevada-California line?

A. Yes, sir.

4974 Q. And you also made up maps, a profile of the road, as required by the Department regulations, covering the whole line through from Caliente to the California state line?

A. Yes, sir.

Q. Those maps were all made and filed in 1889 and 1890, were they not?

A. Yes, sir.

Q. And were made in the name of the Oregon Short Line and Utah Northern Railway Company?

A. Yes, sir.

Q. Do you know whether those maps at that time were approved by the Department?

A. I do not.

Mr. DUNNE. What year was that?

Mr. KELLY. 1889 and 1890.

WITNESS. Principally in 1890. That would be a matter for the chief engineer's office. I was simply a subordinate, you know.

Q. Now, the construction work was begun by the Oregon Short Line and Utah Northern Railway Company in 1889 or 1890?

A. About January 1, 1890.

Q. And the grade was completed across the plains, the Escalante Desert, to Caliente—practically completed?

A. No, sir, there were stretches left in there that were not completed; some of the work had never been touched at all when it was shut down. The amount was small. From Milford to Caliente—the nearest mile is 115 from Milford to Caliente; there must have been 104 or 105 miles of that absolutely completed, the remainder being in various conditions—some of it partially completed, some of it untouched.

Q. The work across to the Nevada state line was what you might call light work?

4975 A. Yes; 75 miles of comparatively light work.

Q. Beyond the Nevada state line to Caliente there was a very considerable amount of heavy work?

A. Yes, sir; it changed right into canyon work there, a short distance toward Caliente.

Q. I believe there are how many tunnels?

A. Six.

Q. Those tunnels were completed?

A. No, sir.

Q. Were they not completed?

A. No, sir; some of them were completed and some not. My remembrance is that there were three which were not completed when work was stopped.

Q. The other four were completed and lined?

A. There were six altogether. My remembrance is that three were entirely completed and lined with timber, and the other three were nearly completed; I am sure that the headings were out of all of them. Any incomplete work would be portions of the benches or portals or things of that kind.

Q. So far as the heavy work was concerned, they were largely completed?

A. Yes. A very large percentage would be done. All the headings were through. I worked through every one of them in 1901.

Mr. LOVETT. What do you mean by "headings"?

WITNESS. The heading is the top portion of the tunnel. It is customary to take the top out first, you know, and then follow up with the bottom, which is called the bench.

Mr. DUNNE. Were they all bored through?

WITNESS. The headings were through all six; the benches were through on three of them and nearly through on the other three.

4976 Q. At the time of the suspension of that work, which occurred October 14, 1890, was there anything known to you or spoken of as to the reasons for suspension?

A. I received a note from Omaha that we would probably be obliged to suspend; it must have been two months before that, at the time of the failure of Baring Bros., which was the cause assigned. London finances was the cause of the suspension, as I have always understood it.

Q. After you left the work, then, in 1890, you did not see it again until 1896?

A. Yes, sir.

Q. At that time you were employed by George Q. Cannon's company?

A. Yes, sir.

Q. And you went to Omaha?

A. Yes, sir.

Q. To see the receivers of the Union Pacific Railway Company?

A. Yes, sir.

Q. The Union Pacific Railway Company was in the hands of receivers and had been then for some three years?

A. Yes, sir.

Q. The Oregon Short Line and Utah Northern Railway Company was also in the hands of receivers?

A. So far as I know, yes. They had the say about these matters.

Q. And do you know how many sets of receivers were appointed for the different mortgage divisions of the Short Line?

A. No, sir: I had been out of that part of the world; I don't know the details of that.

Q. You had access at that time to the original maps and the original field-notes of the survey which had been made by yourself in 1890?

A. Yes, sir.

Q. You examined them?

A. Yes, sir.

4977 Q. Did you get copies or the originals of those field-notes?

A. Copies in every instance.

Q. Blue-print copies of maps and copies of field-notes?

A. Yes, sir.

Q. When you made your survey for the Utah & California Company, you went on to that line and used, in making your surveys and maps for information, the blue-prints of the old line as originally constructed and the field-notes of the surveys made at that time?

A. Yes, sir.

Q. From that information you made up new maps for the Utah & California Company, to be filed in Utah?

A. Yes, sir.

Q. Those were made by you as chief engineer of that company?

A. Yes, sir.

Q. And you saw to their filing in the offices of the land department in Utah?

A. Yes, sir.

Q. At that time you also carried forward the surveys down the Clover Valley Wash toward Caliente?

A. Yes, sir, and all the way to Caliente.

Q. All the way to Caliente?

A. Yes, sir.

Q. And from Caliente to Pioche?

A. Yes, sir.

Q. At that time did you have occasion to examine the articles of incorporation of the Utah & California Company?

A. No, sir, I don't remember ever examining them.

Q. Do you know whether or not at that time the Utah & California Company had any corporate power to own or acquire a railroad within the limits of the state of Nevada?

A. I do not.

Q. Your work of surveying on that land was stopped in

4978 August of 1896?

A. 1896, yes, sir.

Q. You heard nothing more of it until 1901?

A. Nothing more.

Q. You lived in Salt Lake all along?

A. Oh, no, sir; I was on this coast and in Alaska and all sorts of places.

Q. Between 1896, when you suspended work for the Utah & California, and 1901, when you went to work again, you had heard of the fact of the sale of the Oregon Short Line & Utah Northern Railway Company at foreclosure sale?

A. Yes, sir, I had.

Q. And you knew it was being operated by the new company?

A. Yes, sir.

Q. In 1901 you were again employed in respect of those surveys?

A. Yes, sir; in 1901, at the first of the year, I was in Salt Lake City; I had recently come there from Arizona, and I met Mr. Whittemore, and he asked me what I knew about the old surveys, and that is the way——

Q. Can you tell me about the date that you were first approached by Mr. Whittemore?

A. It was about the first of January; that is all that I can remember.

Q. Did he at that time tell you what corporation he was representing?

A. No, sir.

Q. When did you first hear of the San Pedro road? I shall call the San Pedro, Los Angeles & Salt Lake the San Pedro hereafter. When did you first hear of the San Pedro road appearing on the scene for any work or information?

A. Sometime in the fall of 1900.

4979 Q. But, Mr. McCartney, the San Pedro road was not incorporated until March 21st.

A. Yes, sir.

Q. Now, what I want to get at is—I will ask you the question direct: Wasn't Whittemore assuming to act in the name of the Utah & California Company at the time he came to you?

A. Yes, sir.

Mr. DUNNE. Was that in January, 1900?

WITNESS. No, sir, in the fall of 1900. And I should like to explain about the Judge's question. Did you use the word "proposed?"

Q. No, I did not.

A. Excuse me; it is my mistake, then. In the fall of 1900 I was living in Arizona, and in correspondence with some engineer friends they told me of this proposed road. It had no name, by the way, at that time.

Mr. SEVERANCE. Known as the Clark road, wasn't it?

WITNESS. It was so known afterward. It had no name at all at that time.

Q. Now, Mr. McCartney, did you understand at that time that Whittemore was acting for the corporation then known as the Utah & California Company?

A. Yes, sir, I did.

Q. That is to say, the Church Company—the Cannon Company?

A. Yes, sir. He hired me in the latter part of February to go over that line from Milford to Pioche and see what the condition of

it was, and he paid me personally. I understood that the pay was from the Utah & California Company.

Q. Your engagement to commence work for the San Pedro Company, however, was made, and you commenced work on March 26th?

A. Yes, sir. I think I was engaged by them on March 20th.

4980 Q. That was the day before its incorporation?

Mr. SEVERANCE. Part of the story.

Mr. KELLY. Yes, part of the story; that is what I am getting at.

Q. Now, you went down and went over the Short Line's railway and over the Utah & Pacific—the Eccles road, to the end of the line?

A. Yes, sir.

Q. With your party?

A. Yes, sir.

Q. And you left the train there and started forward surveying on the old line?

A. Yes, sir.

Q. You had with you at that time the same notes and profiles that you had used in the survey of 1896, or copies of them?

A. It was either the same notes or copies.

Q. And you laid the survey of 1896 on the identical line that had been originally laid out in 1890 and 1891?

Mr. LOVETT. 1889.

Mr. KELLY. 1889 and 1890, yes.

A. The line was run to fit the old grade. If there were differences or discrepancies, why, I would differ from the old surveys in those particulars.

Q. But the last line that you ran was run so as to correctly locate and define and embrace in the proposed right-of-way, the old grade, tunnels and improvement work that was done by the Short Line Company in 1890?

A. Yes, sir.

Q. The same thing is true of the surveying done by you on the line toward Pioche from Caliente?

A. Yes, sir.

Q. The line of survey made by you, then, was to cover and take the old grade and all of the old work?

A. Yes, sir.

4981 Q. Did you at that time make any estimate of the value of the roadbed, of the completed or partially completed roadbed, grade, tunnels and improvements on that line?

A. No, sir.

Q. You completed that Condor Canyon survey, as I understand you, on April 7th?

A. Yes, sir.

Q. At the time you had completed that work on April 7th, had you heard anything about the advent of the Oregon Short Line construction party at Uvada?

A. I was trying to remember.

Q. If you don't remember, very well.

A. I will just say this. I made that survey from Caliente to the head of Condor Canyon near Pioche, and stopped most of the time at Panaca, and while I was stopping at Panaca, about that time, I heard from the stage men and the teamsters that there had been trouble over there at Uvada.

Q. These surveys that you made you reduced into the form of field-notes and made a profile. Can you give the date of the making of the first and the several maps covering that?

A. I made a map, Judge! not a profile.

Q. Just a map.

A. You understand under the United States law——

Q. Yes, I understand. They call it a map or a profile.

A. Well, it is a map. I made maps. I do not recall the various dates. That would be a matter of record.

Q. Did you make those maps, I mean the drawing of the maps and reducing the field-notes into the form of a map.—did you do that out in the field or back at Salt Lake?

A. At Salt Lake.

Q. After your return?

A. Yes, sir.

Q. Now, you returned to Caliente about the 8th of April?

4982 A. Yes, sir.

Q. And started surveying southwesterly?

A. Yes, sir.

Q. How long did you personally continue in the field southwesterly from Caliente?

A. That I would have to look up in my diaries. The surveys were turned over to Mr. Charles J. Moore as locating engineer.

Q. Let me refresh your recollection. Did you make any of the maps, so that they were in form for submission to the board of directors of the San Pedro Company for adoption, earlier than the middle of May?

A. I could not give you dates without looking them up, Judge.

Q. All right. When was the first time that you saw the Oregon Short Line people at work on the grade, and what were they then doing? I mean in a general way, what work were they doing?

A. They were doing grading work in the vicinity of Caliente.

Q. Can you give about that date? It must have been in July.

A. You see I never went over the line between Uvada and Caliente after I made the survey; during all the trouble with the grading and the track laying I never went over that line.

Q. Then, you don't know?

A. No, sir. I remember going from Caliente up a short distance to find either Deal or Mendenhall one time, and found some other men in there at work, which they said were Oregon Short Line men.

Q. You spoke, Mr. McCartney, of the matter being taken to court and a decision rendered at Carson. Do you remember that be-

4983 fore the Carson decision was rendered the matter had been tried out before the Secretary of the Interior at Washington and about the date of the decision there?

A. No, sir.

Q. Could I refresh your recollection by giving you the date?

A. I can look that date up in my own diary if it is of any moment.

Q. It is not of sufficient importance.

A. I speak of that because I was under orders to go to Washington, and then the orders were countermanded, and the date has gone out of my head.

Q. It was April 25th.

A. If it is of moment I can look it up for you.

Q. Oh, no, it is not of sufficient importance. Now, Mr. McCartney, you surveyed another line, which you called Miller's Springs Pass line. That commenced on the Escalante plains north of Uvada, near Modena?

A. Yes, sir. It was an effort to connect Uvada and Caliente without trespassing on any of the old Short Line grade or work.

Q. That was a preliminary survey which did not result in anything final; it was not adopted?

A. No, sir, it was not adopted. I think we made final location for the whole distance. I don't remember of it ever being adopted.

Q. Can you fix about the date that you did that Miller Pass work?

A. It lasted for months.

Q. There was some work done on that line was there not?

A. In the vicinity of Caliente only. We received orders to get an alternate line, and the decision was rendered, you know, by which we had no rights on the old grade; and then the effort was to
4984 find out how to get from Modena to Uvada without trespassing on anybody's property.

Q. Did you find it a difficult line?

A. Yes, sir, difficult and expensive.

Q. The line south from Caliente through the Meadow Valley Wash, is practically through a canyon for about one hundred miles, isn't it?

A. No, sir, a little less than 70. The total distance to the Moapa River is only about 75 miles; about 70 of that is in a canyon district.

Q. The whole of the line from Caliente south and the canyon line northerly from Caliente amounts to about 115 miles all together?

A. That is, from Pioche to Moapa?

Q. Yes.

A. It would be about 105 miles.

Q. And how far toward Uvada up the Clover Valley Wash?

A. There are about 40 miles of that.

Q. And about 70 miles from Caliente southward?

A. Yes, sir. From Uvada to Caliente is, in round numbers, 40 miles; from Caliente to Moapa is 75.

Q. How closely did the line which you first surveyed from Caliente southwesterly follow the old line laid out originally by you for the Oregon Short Line in 1890?

A. We paid no attention to the survey of 1890.

Q. Paid no attention to that?

A. None at all, sir.

Q. There had been no work done on that line southwesterly from Caliente?

A. None at all.

Q. When you came to making the joint survey, were you personally in charge of the San Pedro party?

A. No, sir; Mr. Charles D. Moore was in charge of the field work.

Q. And were you ever personally down there?

4985 A. Oh, I was down there several times.

Q. The work of what they call the joint survey was done under your supervision on behalf of the San Pedro Company?

A. Yes, sir.

Q. And by Mr. Ashton for the Short Line?

A. For the Short Line, yes, sir.

Q. Do you remember whether or not, in a conference which occurred on November 5th, you were advised that a stipulation had been made between the parties providing for that joint survey work, made and filed in court?

Mr. SEVERANCE. Did you mean September, Judge?

WITNESS. No, November.

Mr. SEVERANCE. You said September just now.

Mr. KELLY. I meant November.

WITNESS. I did not attend the conference on November 5th. There was a conference in progress. I remember having to stay in the office all day and all evening in case I should have to furnish notes, but I did not attend the conference. I attended the conference on November 6th, which was a continuation of the same.

Q. And there was where the outline of the joint conference was given to you and Mr. Ashton for your direction in working out those joint lines?

A. Yes, sir.

Q. Without going into too much particularity about it, the instructions about that joint line were that the two lines should be run, and that as nearly as possible each company should take a full right-of-way, as allowed under the Act of March 3, 1875, but that

4986 where it was necessary to get closer together they were so to do, avoiding bringing the centre lines of the two proposed railroads nearer than twenty feet to each other?

A. Yes, sir.

Q. That work was done and the joint survey made along those lines and upon that principle?

A. Yes, sir.

Q. And the result was two unsatisfactory lines from a construction standpoint and from an operating standpoint?

A. Very much so.

Q. Both expensive to operate and difficult to maintain?

A. Yes, sir.

Q. What was the particular thing from an engineering standpoint which promised difficulties in the future?

A. The principal thing was that one line or the other was in the bed of the stream in the Meadow Valley most of the time, and we wished to get out of that stream as much as possible.

Q. In other words, the Meadow Valley Wash stream interfered with what little ground there was in there?

A. Yes, sir.

Q. Describe in a general way the canyon as it existed from Caliente southwesterly for about that 70 miles.

A. The greater part of the canyon is narrow.

Mr. DUNNE. About how wide?

WITNESS. Oh, it gets down in places to 200 feet; in places where you get 200 feet, probably about 100 feet of that would be channeled in there, and it is crooked.

Q. In those narrow places the walls are high?

A. There are precipitous walls in a great many places in there.

4987 The predominant grade in there is 79 feet to a mile, and when you get water running over a 79-foot grade it means the devil to pay with the railroad. And altogether it is an extremely nasty place—that 70 miles from Caliente south. I know in looking at it at the time of going over it with Mr. Moore, of looking over the joint surveys, he was speaking about it, and I remember of him using the phrase "mutual disaster:" that if we built two lines it meant mutual disaster to both of them in that waterway.

Q. Now, sometime in the summer of 1902 you had instructions to make still another location——

A. Yes, sir.

Q. For the building of a railroad, disregarding both of the joint surveys?

A. Yes, sir.

Q. What was the result of that order to you? What did you do about locating a line through there?

A. We started right at Caliente again and took into consideration what grading had been finished and what natural obstacles there were, and got the best possible line. We wished to conserve any expensive grading whether it was done by us or by the Oregon Short Line. We took that into account. We also took into consideration the water-flow of the Meadow Valley and endeavored to keep out of the channel as much as possible.

Q. And you got a line much more satisfactory than either of the preceding lines?

A. Oh, a great deal more so, yes, sir.

By Mr. SEVERANCE:

Q. Who were present at the conference on November 6th, when Mr. Ashton and yourself were called in and instructions were given to run these two lines?

A. The conference of November 6th was held in Mr. Parley Williams' law office in Salt Lake City, and there were present for

4988 the Oregon Short Line Judge Kelly and Parley Williams, both attorneys, and William Ashton, the engineer of the Oregon Short Line; for the San Pedro there were Mr. Thomas E. Gibbon and Charles O. Whittemore, both attorneys, and myself as engineer.

Q. Then, this was an attorneys' conference?

A. There were four attorneys to two engineers. We didn't stand much show.

Q. But unfortunately the attorneys were divided in their allegiance, or it would have been very hard on the engineers?

A. Yes, sir.

Q. There were no officials of either road present except the attorneys?

A. That was all, sir.

Q. Do you know who were present at the conference of the 4th and 5th that preceded this, when you were kept in waiting to be called in?

A. No.

Q. The same gentlemen, or don't you know?

A. I do not know. I know Mr. Gibbon was there, because he came in at one time to ask me for some facts and figures and mentioned his being at the conference, but who was there I do not know.

Q. You stated that you were not present at any of the collisions between these respective parties in the Meadow Valley Wash. Were you in there at any time afterwards and did you observe any evidences of the fact that they had come together—changes in the grade or abandonment of grade, or anything of that sort?

A. The only thing of that kind I saw was on July 28th, 1901. On that day I came from Panaca to Caliente, and on my arrival there found that the Oregon Short Line track had just reached
4989 Caliente and that they had laid track out over some of our grade which we had completed ourselves, and had driven our men away. I did not see this collision personally, but I landed there right after the track was laid, within probably 30 minutes, and talked to the man in charge of the San Pedro forces, a man named Ben Haywood.

Q. You knew your own grade, didn't you?

A. Yes, sir.

Q. However they were able to do it, they had done it?

A. Yes, sir.

Q. How long was that line from Modena to Caliente?

A. By the Miller Springs?

Q. Yes, sir.

A. It was, in round numbers, the same as the other; somewhere in the vicinity of 90 miles. I beg pardon—50 miles that is.

Q. Not much difference in length from the other line?

A. No, sir.

Q. But it was, as you said, a side-hill line against a line in the valley?

A. Yes, sir; the summit was higher than the one now crossed by the track. That was one objection to it. There were no tunnels on it, but we crossed some very deep gulches which would necessitate steel trestle-work; and all together that 50 miles, in round numbers, from Modena by way of Miller's Springs to Caliente would cost about as much as the original Oregon Short Line 50 miles did in there. It could be built on lighter grades.

Q. Well, is it a feasible line?

A. Yes, sir, it can be built.

Q. And you ran that line, located that line, for the purpose
4990 of avoiding any collision with the other people?

A. Yes, sir.

Q. Now, as I understood you, from Caliente on no work had been done?

A. When we made the survey in April, 1901, no grading had been done by any one south of Caliente.

Q. Did you observe any stakes there that had been set theretofore?

A. Oh, stakes all over, yes, sir.

Q. Did you follow the lines of any previous survey?

A. No, sir; we made our own survey.

Q. You paid no attention to these numerous stakes?

A. No, sir. There were stakes there of surveys by at least four companies, and different lines by different ones of those four companies.

Q. How far from Caliente were those six tunnels that you spoke of?

A. They are all within twenty miles of Caliente.

Q. You say you had no tunnels on the line you surveyed?

A. By Miller's Springs, no, sir; no tunnels.

Q. In answer to Judge Kelly you said that you ran lines to conform to the old grade when you first started out. You said you ran lines to conform to the old grade; and I understood you that that was not the same as the lines shown on the old maps. Is that so?

A. A filing map is always made before any grading is done, and is filed. Then there are always minor changes which come up during the construction, and it is always customary, and is the law of the United States, that after a piece of railroad is finished, another map shall be filed showing the exact line of construction; and that map of final construction had never been filed by the Oregon
4991 Short Line in 1890; in fact it is not customary to file it——

Q. 1890 or 1900?

A. 1890—in 1889.

Q. You mean at the time you made——

A. Yes, the Oregon Short Line filed a map of the line as they expected to build it. There are always minor changes that come in.

Q. Were there changes made in that grade from the line shown on that map?

A. There were small changes, yes, sir.

Q. Did that grade in some places run off the line shown on the map?

A. I should say it might. I don't remember the exact figures, but there are always minor, small changes which come in in construction.

Q. And when you ran your line you followed the grade strictly?

A. We took the grade itself.

By Mr. KELLY:

Q. Without saying anything about the merits of the controversy, the ground that you refer to as seeing the Short Line track laid on, on July 28th, was on the Culverwell ranch?

A. Yes, sir.

Q. As a matter of fact, the Short Line claimed a right to lay their track on that location?

A. That I couldn't say.

Q. That is south of Caliente station?

A. Yes, sir.

Q. Or, rather, in Caliente and south of what the old grade had been?

A. Yes, sir.

4992 A. D. SHEPARD,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Shepard, where do you live?

A. San Francisco.

Q. What is your business?

A. I am general manager and secretary of the Pacific Improvement Company.

Q. Have you ever been in the railroad service?

A. Yes, sir.

Q. With what company?

A. My first experience was with the Erie Railway in New York; the second with the Central Pacific Railway, and last with the Southern Pacific Company.

Q. Up to what time were you connected with the Southern Pacific?

A. Up until September, 1901.

Q. For how many years had you been connected with that company and with the Central Pacific?

A. From 1874 to 1901.

Q. In which department of the railroad service—operating or traffic?

A. Traffic entirely.

Q. What position did you hold at the time you ceased your connection with the company?

A. I was general freight agent.

Q. At San Francisco?

A. Yes, sir.

Q. Previous to that, in what capacity had you been employed by the company?

A. I had been assistant general freight and passenger agent at Los Angeles; I had been assistant general freight agent in San Francisco, and previous to that I had been a local agent.

Q. Were you with the company in 1883 when the Sunset-
4993 Gulf Route was established?

A. Yes, sir.

Q. You remember that occurrence, do you?

A. I do.

Q. From the time of the establishment of that route, what was the policy of the Southern Pacific in moving traffic from the Atlantic seaboard to San Francisco? By what route did they endeavor to move it?

A. They moved it from New York to New Orleans by water, and from New Orleans to San Francisco by rail.

Q. Were you familiar with the character of the service by that route while you were general freight agent and assistant freight agent?

A. Yes, sir.

Q. How did it compare with the service by the all-rail lines to New York, in time?

A. It gave better time.

Q. How much better?

A. It varied with the conditions; sometimes no better; sometimes five days and more.

Q. How quick were you ever able to bring traffic through from the seaboard here?

A. I think I remember a cargo or so that moved from New York to San Francisco in 14 days, but that was an exceptional affair.

Q. What was the ordinary time?

A. As I remember, about eighteen days; eighteen to twenty days.

Q. And what was the ordinary time by the direct rail lines, like the Union Pacific?

A. Sometimes they did as well or better, and sometimes four or five days longer.

Q. What was the condition in your day as to competition between the rail lines and the Sunset line for that business?

A. It was very active.

Q. Did the Union Pacific maintain an agency here soliciting
4994 business for that route?

A. Which route?

Q. By the Union Pacific.

A. Yes, sir.

Q. During all the time you were connected with the Southern Pacific——

A. Yes, sir.

Q. After the Sunset was established?

A. Yes, sir.

Q. Did you handle any traffic by the Sunset Route all-rail by New Orleans?

A. From where?

Q. Well, any territory.

A. Yes, sir.

Q. North of the Ohio River?

A. Occasionally shipments came from north of the Ohio River, but very seldom.

Q. From what regions?

A. I have known shipments by special order moving from Chicago, but that was very seldom and a long time ago. Other shipments moved from Cincinnati, and some moved from Pittsburg, but they were exceptional.

Q. It was a longer route, wasn't it, than the direct lines to the west?

A. I doubt if it was much longer in mileage, but as a rule it was longer in time.

Q. But from the seaboard you were able to make as good time, that is, from New York?

A. From New York to San Francisco.

Q. Now, how did your time by the Sunset-Gulf route from interior points, east of Pittsburg and Buffalo, compare with the routes by the all-rail lines—interior points in Pennsylvania and New York?

A. From interior points between Pittsburg and New York, I don't recall that the time via New York and New Orleans to San Francisco was any better if as good as the all-rail lines.

Q. The all-rail lines had the advantage of a slightly shorter haul than they did from New York proper, while you had the
4995 disadvantage of a longer haul?

A. That is the way I understand.

Q. Taking the traffic into New York?

A. Yes, sir.

Q. But traffic, however, moved in large volumes both ways from that interior territory?

A. By all-rail, yes.

Q. By all-rail and also by your route?

A. Yes.

Q. How was the traffic, would you say, from New England divided as between the Sunset Route and the direct line, like the Union Pacific?

A. The division of tonnage?

Q. Yes.

A. I don't remember.

Q. You remember of its moving largely both ways?

A. I remember that the Atlantic seaboard, Boston and vicinity, shipped freight by New York and New Orleans to San Francisco.

Q. Do you recall when you put on what was known as the Sunset Fast Freight Line, or Sunset fast freight train?

A. Yes, sir.

Q. When was that?

A. When the Sunset Route was first opened.

Q. When the boats were established?

A. Yes, sir.

Q. That was 1883?

A. 1883, yes, sir.

Q. Do you remember when the Sunset Limited passenger train was put on?

A. No, sir; I had nothing whatever to do with passenger traffic.

Q. You said at one time you were general freight and passenger agent in Los Angeles, and I didn't know but you might have slipped over into the passenger side a little at that time.

A. Not to that extent.

Q. So you would not be able to state?

4996 A. I could give you no information.

Q. You remember the existence of such a train?

A. Yes, by advertisement. I never rode on it. They wouldn't accept passes.

Q. It was a train that was very largely advertised by the Southern Pacific Company, wasn't it?

A. Many posters.

Q. Where did it run, between what points?

A. My understanding is it ran from San Francisco via New Orleans and the Seaboard Air Line to the east.

Q. To New York?

A. To Washington.

Q. Was your connection with the Southern Pacific Company sufficiently intimate so that you knew whether they carried a good many passengers in that way?

A. No, sir.

Q. You didn't know.

A. No.

Cross-examination by Mr. LOVETT:

Q. The Southern Pacific never put on any specially fast train like some of those rail lines between New Orleans and San Francisco, did it? They did a prompt freight service between those points generally, didn't they?

A. They did prompt freight service. When the line was first opened they ran special trains in order to carry the cargo through in one lot.

Q. They have always done that, haven't they?

A. Later on they established a regular schedule and handled it in the same way by regular schedule; they did it for operating convenience.

Q. What I means is, to show, if it is a fact, that they did not have any train bearing some particular number and designation

4997 as a fast freight between New Orleans and San Francisco, but they moved most of their transcontinental freight in special freight trains.

A. By New Orleans originally, yes.

Q. To what do you attribute the fact that the Southern Pacific by the Sunset Route, with the longer haul by water from New York by way of New Orleans, made for a time substantially the same time from New York to San Francisco as the all-rail lines?

A. By giving the traffic good attention. They had no better chance in moving traffic via New Orleans to San Francisco than the Canadian Pacific, which I think really has a shorter mileage, yet they handled the freight by giving it proper attention.

Q. Wasn't the fact that it is under a single management probably a very strong factor?

A. Extremely strong factor. That is the reason why I draw a parallel with the Canadian Pacific.

Q. And the all-rail lines: how about their condition or the condition of some of the lines west of the Missouri at that time? Haven't they improved more?

Mr. SEVERANCE. Judge, I can't hear your question. I am sorry to trouble you to repeat it.

Q. I say as to all-rail lines, particularly those west of the Missouri River, haven't they improved their physical condition a great deal in recent years?

A. Yes, sir, very much.

Q. I believe you stated that the Union Pacific, during your connection with the Southern Pacific, was actively soliciting transcontinental business here. All that it secured, all
4998 transcontinental business that the Union Pacific secured, moved over the Southern Pacific?

A. To Ogden, yes, sir.

Q. The Southern Pacific's interest in the transcontinental traffic as between the Ogden Route and the Sunset Route was largely a matter of division of the through rate, wasn't it?

A. I so understood it.

Q. Isn't it true, Mr. Shepard, that except as against the Atchison, the Southern Pacific always controlled the rail rates from the east to California?

A. Practically so, through controlling the through line from New York, via New Orleans, to San Francisco.

Q. And the line from Ogden?

A. And the line from Ogden as well.

Q. Being the only company operating a transcontinental line or transcontinental lines except the Atchison?

A. Through lines.

Q. On the coast?

A. On the California coast, yes.

Q. Such competition as existed between any other railroad companies and the Southern Pacific and the Atchison was competition between the connections of the Southern Pacific east of Ogden and east of El Paso, wasn't it?

A. Yes, sir.

Q. You understood, didn't you, that the Union Pacific and other intermediate carriers in this transcontinental business could not make rail rates to California without the concurrence of the Southern Pacific?

A. No, sir. They could make rail rates without the concurrence of the Southern Pacific—they were independent factors, if they wished to take upon themselves the result of making independent rates.

4999 Q. But I mean under the interstate commerce law they could not do it lawfully? You understood they could not do it lawfully?

A. Not without publication.

Q. They couldn't do it by publication, could they, without the concurrence of the Southern Pacific, under the interstate commerce law?

A. I never understood that the Southern Pacific since the interstate commerce law was bound to confer with the Union Pacific in regard to a rate, or vice versa.

Mr. DUNNE. Speaking of joint rates?

WITNESS. Of joint rates. For joint rates of course the concurrence of all the lines interested must be had.

Q. Well, that is the point. The Union Pacific, for example, could not make a rate to California without the concurrence of the Southern Pacific?

A. Through Ogden, no, sir.

By Mr. DUNNE:

Q. How was the freight handled from New Orleans? You said from New Orleans originally.

A. The freight coming by water from New York was handled from New Orleans in train to California.

Q. You said from New Orleans originally. Did you mean that there was some other harbor at which it was otherwise handled?

A. When I was connected with the Southern Pacific, all their tonnage from New York moved by boat to New Orleans and later thence by rail to San Francisco. Later on, I understood, the port of Galveston was opened and the California freight moved that way. Because the Louisiana and Texas tonnage had grown to such magnitude it called for handling through the New Orleans gateway.

5000 But as to that I am only speaking from hearsay and general knowledge.

Q. But before the Galveston harbor was opened for California tonnage, the Texas and Louisiana tonnage had increased to such an extent?

A. I understand everything was handled by the way of New Orleans; that was loaded in New York by Southern Pacific Company boats.

Q. The freight that came to New Orleans was loaded into trains; they made up train lots of it, didn't they?

A. They did for California.

Q. For California. So that the California freight moved in quantity from New York in unbroken transit to New Orleans, and then was made up into train loads to California?

A. Yes. As I understand, it was loaded in special locations in the steamer.

Q. Exactly.

A. Was first unloaded into cars at New Orleans and came through en masse, and here it was sorted out by its various consignees.

Q. Now, those are the very things I want to call your attention to. Were not those things factors in the speed and service that the Sunset Route was able to give?

A. Very important factors, yes, sir.

By Mr. SEVERANCE:

Q. Mr. Shepard, Judge Lovett was asking you whether the Union Pacific could make any rates into San Francisco without the concurrence of the Southern Pacific. You responded, I believe, that they could not, that all connections had to concur. Isn't it a fact that the Union Pacific by its line reaching Portland and its
5001 boat connection, could make rates from the Missouri River here without the concurrence of the Southern Pacific?

A. The question, as I understood it, was via Ogden. I answered it could not. As to its movement by Portland and steamer to San Francisco it was an independent line.

Q. On the other hand, the Southern Pacific could not make a rate into Cincinnati or Pittsburg or Chicago without the concurrence of its connections, could it?

A. No.

Q. And a very large traffic for California originates in all those places?

A. Considerable tonnage.

Q. In Pittsburg and Chicago particularly, very large tonnage?

A. Heavy tonnage from there.

Q. As a matter of fact, while you were general freight agent of the Southern Pacific, how were transcontinental rates made? Were they made in the Association?

A. I did not attend the associations. That was a matter which concerned the freight traffic manager. He attended all associations, and the rates were then published by the chairman of the Transcontinental Association, Mr. Countiss.

Q. The Southern Pacific and the Union Pacific were separately each members of that association and joined in those tariffs?

A. They were, yes, as far as I know.

Q. And the other transcontinental lines likewise?

A. Yes, sir.

Q. Was Mr. Sproule the gentleman who attended the meetings, or Mr. Stubbs, or both?

A. Mr. Sproule was the principal man during my regime as general freight agent, and attended all the meetings.

5002 Q. Did Mr. Stubbs sometimes attend the meetings?

A. Not of late years.

Q. He used to?

A. He did originally, yes, sir.

Q. I have heard of him. Judge Lovett asked you if the competition of the Southern Pacific was not chiefly with the lines east of El Paso and Ogden, if I understood his question correctly.

Mr. LOVETT. I didn't ask that question.

Mr. SEVERANCE. Just state what the question was.

Mr. LOVETT. I asked him if the competition for this transcontinental business except as between the Southern Pacific and the Atchison was not largely between the connections of the Southern Pacific east of Ogden and El Paso.

Mr. SEVERANCE. That is right.

Q. Now, the Southern Pacific had this line clear through from New York; the Union Pacific had its connections east from the Missouri River, and the Atchison its connections east from Chicago; that is correct, isn't it?

A. Yes, sir.

Q. Were those three routes competing with each other for transcontinental business always from the time the Santa Fe was built?

A. They were all carrying traffic, yes, sir.

Q. And all trying to get all they could, weren't they?

A. All trying to secure the traffic and had their agents out on the street, I believe.

Q. The natural inference from Judge Lovett's question was that the Union Pacific was not competing with the Southern Pacific but only competing with the Santa Fe. Now, I didn't so under-

5003 stand you to testify. You did not intend to so state, did you?

A. I did not intend to testify regarding the policy or the work of the Union Pacific road. They can answer for themselves. I am speaking in regard to what the Southern Pacific was doing concerning freight from the Atlantic seaboard via New Orleans to San Francisco.

Q. Yes, I understand, Mr. Shepard. I am not asking you as to your opinion concerning the Union Pacific methods and what they did or anything of that sort. I merely asked you whether the Union Pacific did not have its soliciting agents in the field endeavoring to secure the routing of transcontinental business over their line, the Santa Fe the same, and the Southern Pacific the same, working the New Orleans route.

A. Yes, sir, and a flood of others—trunk lines and all.

By Mr. LOVETT:

Q. Isn't this true, Mr. Shepard, that while the Southern Pacific sought to route all of the transcontinental traffic that it could by

the Sunset, yet if it could not get it that way it would seek to send it by way of Ogden?

A. Most positively, yes, sir.

Q. In other words, it preferred its own line all the way if it could get it? If it could not get it, then it would take the next best thing—the Ogden route?

A. It was business to prefer its own line. The next route was the Ogden Route, and every effort was used to move freight that way. When a Southern Pacific soliciting agent found he could not move freight by his own line he stepped out and told the connec-
5004 tions—the Union Pacific connection at times, because they were very friendly. What he could not control some other favored agent might control, I should say.

Q. Now, with reference to this boat line of the Union Pacific by way of Portland. Isn't it true that during your whole connection with the Southern Pacific you never knew of the Union Pacific to attempt to work California business from the east by Portland and the boat line?

A. I never heard of an instance of the Union Pacific trying to handle transcontinental freight by Portland. It may be possible some shipments came that way, but I was not very familiar with that route and I never looked upon it and never so considered it as a transcontinental factor.

Mr. DUNNE. Why not?

WITNESS. Because it was an out-of-the-way route. It was an unnatural route.

By Mr. SEVERANCE:

Q. Was that any more out of the way than the Sunset Route, in mileage?

A. I think it was a longer mileage, yes; I am not sure.

Q. Are you sure?

A. I am not sure, I am not positive.

Q. Would you be astonished to learn it was not as long as the Sunset Route from New York to San Francisco?

A. Possibly not, but it did not move the business. The same way with the Canadian Pacific. If I remember correctly, the Canadian Pacific was a shorter line, but it did not move the business. I said the reason why the business moved Sunset was because it was given special attention. It moved en masse. A man might bring a
5005 hundred tons of freight down to the Southern Pacific docks in New York, and that hundred tons would be given in one time and one place in this city, whereas if it moved other ways it would come here in a dozen different cars spread over that long distance.

Q. You had first-class service that way?

A. First-class service that way.

Q. You had able management?

A. We thought so.

Q. You still think so, don't you?

A. I think so, yes, most decidedly.

Q. And that had a good deal to do with the good service, hadn't it?

A. Something, I admit.

Q. And the good service had something to do with getting the business as well as the solicitation?

A. We always claimed it.

Q. Now, this route by Portland, as you say, was never used so far as you know by the Union Pacific. The Union Pacific could by the use of that route have reduced rates through this whole territory, couldn't it, if for any reason it was not well treated by the Southern Pacific Ogden connection?

A. It strikes me that would depend something upon the eastern connections of the Union Pacific.

Q. Couldn't the Union Pacific make all the reductions they pleased from the Missouri River west without regard to their eastern connections?

A. I think not.

Q. Why not?

A. Because the Union Pacific might not have made divisions with them.

Q. Very good, but the Union Pacific, so far as the divisions of the through rate accruing west of the Missouri River, was
5006 absolutely master of the situation. It could give the lines east of the river their rates and still reduce its own proportion?

A. Yes, but they might have demanded more.

Q. Yes; that is all speculation, that they might have done that. But the lines east of the Missouri River could have received the same revenue exactly, and still the through rate have been less, if the Union Pacific was willing to cut the rate from the Missouri River to Portland, as the Soo carried business by Vancouver for years, into San Francisco? That is true, isn't it?

A. The Union Pacific could probably have reduced the rate that way if they thought it wise and best, but they didn't.

Q. Certainly they didn't; I understand that.

A. So far as I know.

Q. Mr. Stubbs testified in Chicago that the Union Pacific had always been accorded fair divisions by the Southern Pacific, in fact he said more than fair divisions by the Southern Pacific on business moving via Ogden. That being the case, there was no incentive for them to move traffic that way if they could get decent treatment the other way; isn't that so?

A. That would depend entirely upon what the divisions might have been west of Ogden. Those divisions might not have paid them to move freight via Portland and steamer to San Francisco.

Q. That is it exactly. You know what the division was by Ogden and the Missouri River, don't you—54 and 46, wasn't it?

A. Yes.

Q. And, as Mr. Stubbs said, that was more than fair to the Union Pacific; therefore there was no reason why they should
5007 move freight by Portland, was there, if they could get a fair division this way? Isn't that true?

A. It would seem so.

Q. Now, so far as this matter of competition is concerned: the Southern Pacific management, as you say, moved what they could by the Sunset because they get the whole of the revenue. If they could not get it that way they would prefer to get it by Ogden rather than have some other line get it, and they get no revenue: that is correct, isn't it?

A. Yes, sir.

Q. But if the Union Pacific did not succeed in getting it over their line from the Missouri River to Ogden, they were cut out of it entirely, weren't they? They didn't have any share in any business that went by the Sunset, did they?

A. Well, I don't know.

Q. Did they?

A. They might not have moved it. I don't know what their internal arrangements might have been.

Q. I say so far as you know the Union Pacific received no revenue on business moving by the Sunset?

A. I am quite sure they did not.

Q. Yes, that is what I thought.

A. But I don't suppose they received revenue on anything they did not carry over their rails.

Q. Very true. Therefore, when they came to this question of competition, it was vital to the Union Pacific to move everything they could over their own rails; otherwise they would get no revenue out of it. That was true, wasn't it?

A. I so understood it.

Q. And that was the reason for the competition between the
5008 Union Pacific on the one hand and the Santa Fe and the Southern Pacific on the other, wasn't it? Each one was striving for revenue?

A. The freight that moved from the east via Ogden did not move entirely over the Union Pacific rails.

Q. But in so far as it did move over them, it was their sole source of revenue on that freight, wasn't it?

A. Yes, so far as I know.

Q. The Union Pacific had to secure all the transcontinental freight they could over their own rails even if part of the through rate had to go to their connections east of the Missouri River and west of Ogden?

A. Yes.

Q. Otherwise they would not get any revenue from transcontinental business?

A. They had so arranged it, yes, sir.

Q. Now, the through rate from New York on business moving to San Francisco by the Union Pacific was divided, first, the lines east of Chicago; second, the lines from Chicago to Omaha; third, the Union Pacific; fourth, the Southern Pacific?

A. Yes, sir.

Q. The Union Pacific's interest in the transcontinental business was to secure its revenue out of that through rate, wasn't it? That was its interest?

A. I so understood it.

Q. And they actively sought to have business routed that way so as to get that revenue?

A. You are asking me to testify for the Union Pacific road.

Q. No, no.

A. I am not here to testify for the Union Pacific road. I am here to give you what little knowledge I have concerning the traffic that was moving prior to 1901.

Q. I understand you. But you were familiar with the fact
5009 that they had soliciting agencies in the field working traffic that way?

A. Yes.

Q. Both here and in the east?

A. Yes, sir.

Q. The Southern Pacific agency, on the other hand, as you have testified, was endeavoring to move the seaboard traffic by the Sunset?

A. The Southern Pacific likewise had agencies in the east; they had them in Cincinnati, and they had them in Denver, and they had them in Chicago, and everywhere, trying to move freight via Ogden.

Q. Was that their preferred route?

A. It was always their preferred route with the exception of the Sunset from the Atlantic seaboard. They moved practically little or no freight to California via New Orleans except from the Atlantic seaboard.

Q. It appeared by the testimony in this case taken in Cincinnati, that Mr. Connor, who was the general agent of the Southern Pacific at Cincinnati previous to the amalgamation of the lines, worked the traffic so far as he could by New Orleans.

Mr. LOVETT. And if he couldn't get it that way he would take it by Ogden.

Mr. SEVERANCE. Yes, but he tried to take it that way.

A. My experience, when I had charge of the San Francisco terminals, was that very little tonnage came from Cincinnati or any interior point via New Orleans. The great bulk of it came via Ogden, and they were moving everything they could via Ogden as a rule. Sometimes they would get freight from Cincinnati via New Orleans.

5010 Q. Mr. Shepard, isn't this the fact: that the business moved in large volume, by way of Ogden because of the efforts of the Union Pacific organization and its connections, to Chicago? They were strong in that territory, weren't they?

A. The Union Pacific of course was strong north of the Ohio River, but the Southern Pacific agents were moving freight primarily via Ogden from all that territory, as I have already said. The movement from Cincinnati and Pittsburg and all the interior country via New Orleans was but nominal at the best, and as a rule was only by people who preferred to move their freight that way because they had plenty of time on their hands and didn't care very much as to when it would arrive. The time was slow and it was irregular; it was very unsatisfactory because the roads north of New Orleans were not giving good service, as a rule?

Q. Do you know Mr. Connor of Cincinnati?

A. I know Mr. Connor of Cincinnati, yes, sir.

Q. Did you know that Mr. Connor's efforts were put forth to move that traffic from Cincinnati by New Orleans?

A. I never so understood it.

Q. You wouldn't deny it, would you, in view of the fact that the testimony in Cincinnati shows it?

A. I wouldn't deny what Mr. Connor's business might have been or what his instructions might have been, because he never received them from me and I knew nothing about them. I only know the result of the work in Cincinnati.

Q. You knew that most of the Cincinnati business came the other way?

A. Yes.

5011 Q. But as to what efforts were put forth by the Southern Pacific agency in Cincinnati you don't attempt to testify?

A. Not at all, no, sir.

Q. You were at one time at El Paso, weren't you?

A. Yes, sir, I was joint agent with the Texas & Pacific at El Paso at one time.

Q. Did traffic in considerable volume move that way to San Francisco by the El Paso connection?

A. By which route, sir?

Q. By any of the connections at El Paso other than the Sunset.

A. Very little, if any. That was wholly because the Texas & Pacific road was in very poor shape for handling it.

By Mr. DUNNE:

Q. Mr. Shepard, the Union Pacific had connections which ramified into Montana and Idaho through the Short Line, had it not?

A. From Ogden, yes, sir.

Q. Well, Pocatello?

A. Yes, sir.

Q. In other words, if you started out from Ogden you could make a very complicated zigzag and come back and get into Portland, couldn't you?

A. Surely, yes, sir.

Q. Now, as a mere question of power, the Union Pacific could have sent freight by that fantastic route, finally reach Portland and come

by boat down to San Francisco? Such a thing was humanly possible, wasn't it?

A. Oh, if distance and cost of transportation are not considered, of course they could move from San Francisco to Ogden and throw it into Portland and bring it back to San Francisco.

Q. That is not practical or practicable railroading, is it?

5012 A. It would hardly be wise.

Q. Now, Mr. Shepard, if the Union Pacific had insisted on forcing freight beyond Ogden to Portland, trans-shipping it at Portland and sending it by water down to San Francisco, a route that you say in your experience was not employed, was there anything to prevent the Southern Pacific from retaliating at Ogden and exchanging its controlled business with the D. & R. G. instead of with the Union Pacific?

A. You are referring to east-bound traffic?

Q. Yes, sir.

A. Of course the Southern Pacific could have diverted its east-bound business to the D. & R. G.; it was interchanging business at Ogden with the D. & R. G. all the time.

Q. There was nothing to prevent its making the D. & R. G. its preferred connection if it so wished?

A. None that I know of.

Q. In point of fact, if the Southern Pacific, at the western end, in connection with the Denver & Rio Grande and the eastern connections of the Union Pacific, had united the business along those routes, could they not in effect have bottled up the Union Pacific, if the Union Pacific had undertaken to cut rates and force business by way of Portland?

A. They could not have bottled them up, because they had the chance to move freight that way, but they could have made it very disastrous to the Union Pacific.

Q. Yes. You say they could not have bottled them up, because they could have moved freight that way, but that would have been the only possible salvation for the Union Pacific,

5013 its only way out, wouldn't it?

A. It would have been the only way the Union Pacific could have gotten to San Francisco.

Q. They could have cancelled divisions with the Union Pacific on that route, couldn't they?

A. I always looked upon the subject of divisions as a voluntary act on the part of any company.

Q. Precisely. Now, with reference to the conditions obtaining upon the Southern Pacific Sunset Route by water to New Orleans and by rail from New Orleans to San Francisco. You have illustrated here the special value and utility of that route, and you have given us the special conditions in the way of handling freight. I ask you if those special conditions were not directly related, in the first place, to unity of management, and, in the second place, to entirety of route.

A. Yes, sir, positively.

By Mr. SEVERANCE:

Q. Mr. Shepard, you have said it would not have been practicable railroading, as I understood you in answer to Mr. Dunne, to send traffic to San Francisco by way of Portland. Was it practicable railroading for the Canadian Pacific to move San Francisco traffic from the east by their line and the boat connection?

A. I said it was not practicable railroading to move freight from San Francisco to Ogden and thence to Portland.

Q. Oh! I didn't understand that. Of course there can be very little doubt about that. I am speaking of the movement of
5014 transcontinental freight from the east. Do you mean to testify that it would not be practicable to move that by Portland?

A. No, I have already said that it was possible to move freight from the east via Portland and water to San Francisco; it is a matter of transportation, the same as moving freight from New York by the Canadian Pacific to Vancouver and boat to San Francisco. It reverses the proposition as on the Sunset Route.

Q. That is what I understood you to say. Now, you remember that for many years, for eight or ten years, the Canadian Pacific carried freight that way at a 10 per cent reduction of the regular transcontinental rate, don't you?

A. For some time the Canadian Pacific had a differential, yes, sir.

Q. And it finally arbitrated the question as to whether it should have it, and it was decided by the arbitrators that they should take it out, and they did. You remember that, don't you?

A. I remember the time that that was done, yes, sir, when the Canadian Pacific practically withdrew.

Q. What was the effect upon transcontinental rates of the maintenance of that differential by the Canadian Pacific? Didn't it create a demoralization in rates all through this territory, on transcontinental business?

A. I don't recall it so, because the Canadian Pacific was never an important factor in the premises.

Q. You don't remember that? Your friend Mr. Stubbs remembered, but I didn't know whether you did or not.

Mr. LOVETT. I don't think Mr. Stubbs remembered that, Mr. Severance.

5015 Mr. SEVERANCE. He so stated in his address, which he swore was true.

A. I know there was some disturbance growing out of the fact that the Canadian Pacific had a differential. It was claimed they should not have the differential because they did not have a disadvantage.

Q. And that was the ground on which the thing was arbitrated out?

A. It was always a thorn, though, because it was drawing comparisons between the two routes at all times. Any two roads going between any points, where one had a differential over the other, is a matter of disturbance at the best. But there was very little tonnage

moved in by the way of the Canadian Pacific, comparatively speaking, even under their differential, but because it was a disturbing factor it was arbitrated.

Q. Yes, that is what I understood.

Mr. DUNNE. That is, the thorn was taken out?

WITNESS. It was withdrawn.

Q. It was taken out by the arbitrators; the arbitrators decided, two to one, it should be taken out.

A. Because they were not operating under a disadvantage.

Q. Yes, that is the idea. And you agreed with that conclusion, that that was not a disadvantage, didn't you, that they were not operating under a disadvantage?

A. No, they had no disadvantage as compared to the Sunset Route or the all-rail route, so far as I could see.

Q. Or they had no disadvantage as compared with the Port-
5016 land route except they were perhaps a little longer?

A. Practically so, yes, sir. No, I will modify that. The Portland route was at a disadvantage because it did not have a continuous line of its own. The Canadian Pacific practically did have a continuous line of its own from the Atlantic seaboard via Vancouver to San Francisco, and practically upon the same basis with the Sunset. The Union Pacific, while it may have had a rail and a boat line from Omaha to San Francisco, yet it had to depend upon its eastern connections, which was a decided disadvantage. As between the two routes, the Portland route would be entitled to the differential.

Q. Take business moving out of Chicago: what was the difference in the condition of the Union Pacific and the Canadian Pacific?

A. I have always understood that the Canadian Pacific either owned or controlled a road out of Chicago.

Q. Where?

A. I can't speak authoritatively, but I have always looked upon the Wisconsin Central and its immediate connections as property that was under the strict control of the Canadian Pacific, within my time.

Q. That has been within the last sixty days, hasn't it?

A. Probably the financial control came within that time, but I have always understood during my regime as the general freight agent of the Southern Pacific that the Canadian Pacific owned or practically controlled a road out of Chicago.

Q. Perhaps you are getting two roads mixed. Don't you remember that for years previous to the receivership, the Northern Pacific had a lease of the Wisconsin Central?

5017 A. I don't remember.

Q. So it was on the part of the Northern Pacific and not the Canadian Pacific?

A. I am not positive as to that, but it is my recollection that the Canadian Pacific had a road out of Chicago at that time. They certainly had connections and ramifications into the Atlantic seaboard territory which was the principal feature.

Q. Are you able to name any line that they controlled into Chicago? Didn't they have to interchange business with all the lines between Minneapolis and Chicago, just the same as the Union Pacific did between Omaha and Chicago?

A. Well, ownership of a road doesn't cut so very much figure where they have an agreement or understanding that rates will be maintained or will be sustained as between the two—rates and divisions. It is not necessary to own a road to make it a preferred line.

Q. The Union Pacific had pretty fair relations with the Chicago & Northwestern at all times, hadn't they?

A. They had, yes, so far as I know.

Q. They were as well fixed, then, into Chicago, weren't they, as the Soo, even if that had an arrangement, which I never heard of before, with the Wisconsin Central?

A. That is what I know nothing about. I know nothing about what the arrangements of the Northwestern may have been with the Union Pacific as to an agreement to accept and divide all rates upon a specified basis, and that is the only way in which a competitive line of two different roads can be sustained properly, so far as my knowledge goes.

5018 Q. The connections of the Union Pacific at Omaha were very powerful and turned a very large business into the Union Pacific at that point, didn't they?

Mr. LOVETT. What is that question, Mr. Severance?

Q. I say the connections of the Union Pacific were very powerful and turned a large business over to the Union Pacific at that point?

A. Yes, sir.

5019 STANLEY DOLLAR,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Dollar, where do you live?

A. San Francisco.

Q. What is your business?

A. Shipping.

Q. What company are you connected with?

A. The Robert Dollar Company.

Q. What is your boat line called?

A. Called the Dollar Line.

Q. And where do your boats run?

A. On the coast and to the Orient.

Q. To what ports in the Orient?

A. All the principal ports.

Q. Can you name them, please, Mr. Dollar?

A. Hongkong, Shanghai, Moji, Kobe, Yokohama, and North Japan ports, Kokodate and Muraran.

Q. Have you ever had through rates in connection with any of the transcontinental railroads?

A. No, sir.

Q. How long has your line been established?

A. It has been about seven years in the Oriental business.

Q. How many ships have you?

A. Three at present.

Q. How often are your sailings?

A. About every 90 days.

Q. And what kind of traffic do you bring in from the Orient?

A. Genefal cargo.

5020 Q. You mean things that are generally brought over?

A. General merchandise, yes.

Q. What is your port on this side?

A. We have been coming to San Francisco.

Q. Have you ever had any negotiations with any railroad company with reference to establishing through rates with them?

A. Yes, sir.

Q. What line?

A. The Salt Lake.

Q. That is, the Salt Lake road is what is commonly known as the San Pedro, Los Angeles & Salt Lake Railroad?

A. Yes, sir.

Q. With what individual did you have your negotiations, or what individuals?

A. Mr. Gillette, I think, was the first one; then we had it up with Mr. Wann and the general manager.

Q. Mr. Wells?

A. Mr. Wells.

Q. Over what period were those negotiations protracted?

A. Several years.

Q. Did you get at an arrangement or anything like an arrangement with them?

A. No, sir.

Q. How near did you come to it?

A. The drafting out of an agreement.

Q. How long ago was that, do you remember?

A. I think just before the fire was the first one, and we had it up afterward.

Q. What kind of a line was it proposed to establish with them, what ports were you to make?

A. We were to make the ports wherever the business warranted.

Q. On this side what was to be your principal port?

A. San Pedro.

5021 Q. Were you to make San Francisco also?

A. That was left optional with us. We had to make San Pedro first.

Q. At any time during those negotiations was the matter referred by Mr. Wann or Mr. Wells to any other official for his concurrence?
A. Judge Kelly.
Q. I mean any other official of the company or connecting line?
A. Well, it was referred to New York. I don't know whom it was referred to there. It just said in the correspondence to New York.
Q. Who told you it had to be referred to New York?
A. Mr. Wells I think it was.
Q. Did you ever hear of Mr. Bancroft's name connected with the transaction in any way?
A. Yes, they put it up to Mr. Bancroft, I believe.
Q. What was the final result, after referring it to New York and to Bancroft? Did you make a deal or didn't you?
A. No, sir.
Q. Were you willing to make an arrangement on your part?
A. Yes, sir.

Cross-examination by Mr. KELLY:

Q. You never heard that Mr. Bancroft made any objection to the proposed arrangement?
A. No, I don't know who made the objections.
Q. You heard something about me in that connection, did you not?
A. Yes.
5022 Q. And were the negotiations finally dropped, soon after the passage of what is known as the Hepburn Act?
A. No.
Q. That was in 1906.
A. No, we hadn't correspondence after that.
Q. The correspondence finally dropped about 1907, did it not?
A. 1907, yes.
Q. About the time of the requirements of the interstate commerce law for the publication of through tariffs from point of origin in Asiatic ports to destination in the United States; soon after that it dropped, didn't it?
A. It dropped, yes.

5023 A. C. RULOFSON,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Rulofson?
A. Berkeley, California.
Q. What is your business?
A. I am a manufacturers' agent, representing some large eastern manufacturers, and I am also president of an architectural sheet metal factory at San Francisco.

Q. Have you ever been connected with Baker & Hamilton, the hardware company?

A. Yes, sir.

Q. When?

A. I went with them in April, 1870, and left them on September 15, 1904.

Q. Are Baker & Hamilton a rather large wholesale hardware house here?

A. They are.

Q. Into what territory did they wholesale?

A. All over the Pacific coast states and territories and Hawaii.

Q. From what part of the United States did they receive their stock, as a rule?

A. All the large manufacturing centers in New England, the Atlantic seaboard, middle west, and some from the southern states.

Q. Do you remember whether the Southern Pacific and Union Pacific agencies each solicited your business from the East?

A. I do, yes, sir.

Q. Which way did the Southern Pacific agency solicit your
5024 business from the seaboard and Pittsburg and that region?

A. Via the Sunset Route.

Q. Sunset-Gulf?

A. Originally via New Orleans, and then subsequently they delivered it to Galveston.

Q. By boat and rail?

A. By the combination, yes, sir.

Q. And which way did the Union Pacific solicit the business? By the Missouri gateways?

A. Yes; they wanted it brought through Ogden.

Q. Do you remember Mr. Graham, who was one of the solicitors of the Southern Pacific?

A. Very well.

Q. Did he solicit your business?

A. Yes, sir.

Q. Did you ever ship anything by the Panama route?

A. Yes, sir.

Q. How many years did you use that route?

A. Well, as long as I can remember. We originally shipped via Cape Horn, by sailing vessels, and the freight we were in a hurry for we used to ship by the Pacific Mail steamers via Panama; that is, when the Pacific Mail was operating their steamers on both sides of the continent.

Q. Did you ever ship by the American-Hawaiian line?

A. Yes, sir, around through the Straits of Magellan.

Q. You were not connected with the Baker & Hamilton company after they had the Tehuantepec route opened, were you?

A. No, not for Baker & Hamilton; but I have made shipments that way since I left Baker & Hamilton—not Baker & Hamilton freight, though.

Q. Did you ever have any shipments from any points in the middle west by way of Portland and boat from Portland to San
5025 Francisco?

A. Baker & Hamilton had, yes, sir.

Q. I mean Baker & Hamilton.

A. They had. They were very unsatisfactory. They were experimental and were discontinued.

Q. What was the nature of the shipments?

A. It came under my notice that the implement department, which dealt in wagons, had shipped some Bayne wagons from Kenosha, Wisconsin, and for some reason that I never knew they went Union Pacific via Portland. My attention was directed to the shipment by the discussion as to how badly the wagons were chafed up and the endeavor of the manager of that department to locate the responsibility and get a damage claim through. Each one tried to shift it to somebody else.

Q. Each one pointed to the next man?

A. The steamship company passed it up to the O. R. & N., the O. R. & N. passed it to the Union Pacific, and the Union Pacific passed it up to somebody else. I don't think they ever got any settlement. I might say that the Union Pacific or the Oregon Short Line or the steamship companies never solicited any freight from me to be routed that way.

Q. Yes, I assume they didn't.

A. But somebody got it out of somebody at that time. I never knew how it came to go that way.

Mr. LOVETT. Evidently an accident.

Q. Previous to the union of the Union Pacific and the Southern Pacific did any traffic move from Cincinnati and Pittsburg by New Orleans-Southern Pacific—any of your traffic?

A. Prior to 1901?

5026 Q. Yes.

A. Yes, sir.

Q. What class of traffic?

A. Heavy hardware, nails, and probably barbed wire. I have no independent recollection of any specific shipment, but I know we used to ship that way. I think there used to be a line called the Cannonball Line that shipped that way, and we used to ship some Queen & Crescent.

Q. Queen & Crescent to New Orleans and then Southern Pacific here?

A. Yes, sir.

Cross-examination by Mr. DUNNE:

Q. Were you connected with Baker & Hamilton at the time the differential was conceded to the Canadian Pacific?

A. I was connected with them when we used to get a differential from the Canadian Pacific. I don't know whether it was ever conceded or not. I thought they took it arbitrarily.

Q. How many years was that?

A. Oh, it was quite a number of years; I don't remember just how long it was. We made some shipments that way.

Q. How did the volume of business that moved that way, during the time that the differential was in force, compare with the volume of business that moved by the long differential lines?

A. You mean speaking from my own experience, my own personal knowledge?

Q. Yes, sir.

A. I shouldn't say it was 2½ per cent of our shipments. Very small, I know. We didn't like to encourage it.

5027 J. P. WILLIAMS,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Williams, what is your business?

A. I am the agent for the Panama Railroad Company.

Q. How long have you been the agent of the Panama Railroad here?

A. Since May 1, 1907.

Q. Previous to that what was your business?

A. I was with the Pacific Mail Steamship Company.

Q. For how long?

A. About five years.

Q. And previous to that what was your business?

A. I was with the St. Louis & San Francisco, the St. Louis & Missouri.

Q. Were you with the Pacific Mail at the time the Panama Railroad had its steamers here?

A. I was with the Panama Railroad at that time.

Q. Oh, you were with the Panama Railroad then?

A. Yes.

Q. When was that?

A. 1901.

Q. At the present time how is the traffic moving by the Panama route up to San Francisco—by what line of boats?

A. Panama traffic?

Q. Yes.

A. From New York?

Q. Yes. How does it get to San Francisco, on this side of the Isthmus, now?

A. By the Pacific Mail Steamship Company.

5028 Q. That is the only connection you have?

A. Yes, sir.

Q. What class of boats has the Pacific Mail in that service?

A. They are considered out of date.

Q. How often do they make a trip to the Isthmus from here?

A. They have a 9-days schedule at present.

Q. And how many stops do those boats make between here and the Isthmus?

A. I should say 9 or 10 stops.

Q. What is their usual time between here and the Isthmus?

A. You are speaking of the present time?

Q. Yes.

A. I suppose they average close to 30 days.

Q. 30 days?

A. Between 25 and 30 days.

Q. Between here and the Isthmus?

A. Yes, sir.

Q. What is the principal tonnage of those ships?

A. It is coast tonnage leaving here, east-bound.

Q. How is it coming back?

A. It is principally cargo originating at New York.

Q. And where is that cargo discharged? Does it come through here or is it discharged en route?

A. It is discharged here. It is cargo destined to all the coast ports.

Q. I mean does it come through to San Francisco?

A. Yes, sir.

Q. Or is it discharged at southern ports—the New York business?

A. They discharge cargo from New York all along the coast between Panama and San Francisco.

Mr. DUNNE. That includes the Mexican coast?

WITNESS. Mexico and Central America.

5029 Q. How do the Panama Railroad steamers on the other side compare in equipment and capacity with the Pacific Mail boats on this side?

A. They are very much larger and considered far superior.

Q. What is the service on the Atlantic side—how frequent is it?

A. They have a 6-days sailing at present; 6 days between New York and Colon, the Atlantic port.

Q. How long does it take them to make that trip?

A. Between New York and Colon?

Q. Yes.

A. 6 days.

Q. How frequent is the service?

A. Every 6 days.

Q. They make the trip in 6 days and they have a ship every 6 days?

A. Yes, sir.

Q. What is your business here as local agent of the Panama Railroad?

A. I solicit business and handle any other matters that need looking after.

Q. Is it part of your duties to solicit business?

A. Yes, sir.

Q. East- or west-bound?

A. Both ways.

Q. How about east-bound traffic from here? Are you able to handle east-bound traffic?

A. I should say at times we are able to get more cargo than they can move. The steamers are booked full days before sailing.

Q. Booked full of what—New York cargo or coast cargo?

A. Both; principally coast cargo.

Mr. LOVETT. What do you mean by coast cargo?

WITNESS. Cargo destined to the coast, Central American and Mexican ports.

5030 Q. How does your time from New York by that route compare with the time that was made when you first went with the company, some years ago?

A. I should say it is about the same. The approximate time between New York and San Francisco?

Q. About how many days is that?

A. It averages about 45 days.

Q. What is the average time of the American-Hawaiian line, do you know?

A. I think it is close to 30.

Q. How long does it take to get traffic across the Isthmus from Colon to Panama?

A. That depends.

Q. Well, ordinarily and normally?

A. It is only 47 miles, and they can make the run across there in a couple of hours.

Q. But you have to discharge your cargo and load it on the car?

A. I should say approximately from 4 to 6 days.

Q. That is, to discharge the cargo on the Atlantic side and get it over to the Pacific side and get it loaded?

A. Yes, sir.

Q. The cargo from New York is landed in Panama in from 10 to 12 days from the time it leaves New York?

A. Yes, sir.

Q. The balance of the 45 days is consumed by getting it up here by the Pacific Mail?

A. Yes, sir.

Q. When the Panama Railroad had its own steamers on the Pacific side, what was the ordinary time between New York and San Francisco?

A. The ordinary time between those places?

Q. Yes.

A. I should say it took 30 to 35 days.

(No cross-examination.)

(An adjournment was here taken until the morning of Wednesday, May 12, 1909, at 10:30 o'clock.

5031 UNITED STATES DISTRICT COURT ROOM,
San Francisco, Wednesday, May 12, 1909, 10:30 a. m.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present on behalf of the Complainant, Mr. C. A. Severance and Mr. G. E. Husted; on behalf of the Defendants, Mr. R. S. Lovett and Mr. Peter F. Dunne.

E. H. PRENTICE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Prentice, where do you live?
A. At present at San Mateo.
Q. What is your business?
A. President and manager and owner of the Phoenix Desk & Chair Company, San Francisco.
Q. How long have you been in that business?
A. Two years and a half.
Q. Previous to that what was your business?
A. District freight and passenger agent Southern Pacific Company, located at San Francisco.
Q. How many years were you connected with the Southern Pacific Company?
A. Directly and indirectly, from 1878.
Q. Up to the time you ceased two years and a half ago?
A. Yes, sir.
5032 Q. Continuously?
A. Yes, sir.
Q. And in what capacity did you serve that company other than district freight and passenger agent?
A. I was first employed by the company on the pay-rolls, as I said before, about 1878, as receiving-clerk. Do you wish the details?
Q. Just in general.
A. As receiving clerk at the Market Street ferry. After that I went to work for the company at the general freight office. I went through the various departments there. I have always been a freight man.
Q. I was going to ask you whether you were always in the traffic department?
A. Yes, sir.
Q. As distinguished from the operating department?
A. Yes, sir.
Q. How long were you engaged in the business of soliciting freight?
A In round numbers, about 15 years.
Q. Up to the time you ceased in the business?
A. Yes, sir.

Q. I will first direct your attention to the time previous to the acquisition of the Southern Pacific stock or the control of that road by the Union Pacific. You remember that occasion, don't you?

A. That was prior to 1901?

Q. Yes, prior to 1901.

A. Yes.

Q. I will come to the later days in a moment, but I am now addressing my questions to a date previous to that time.

A. Yes, sir.

Q. How did the Southern Pacific agency here in San Francisco endeavor to work freight from the Atlantic seaboard, east of

5033 Buffalo?

A. By the Sunset-Gulf route.

Q. And how did they undertake or endeavor to work freight from Pittsburg and that region?

A. Some via New Orleans, but I think the bulk, by request of consignees in most cases, via Ogden.

Q. Where the railroad company could secure the routing by New Orleans, did they send it that way?

A. You mean from Pittsburg now?

Q. Yes, sir.

A. Not as far north as Pittsburg.

Q. Well, what points?

A. Cincinnati and immediate vicinity.

Q. How did you work business from Cincinnati?

A. By New Orleans.

Q. And did business move from Pittsburg by New Orleans also?

A. To my best recollection very little, on account of time; it was rather too far north.

Q. And the business from Cincinnati and vicinity moved to New Orleans over what route, do you remember?

A. Queen & Crescent, Louisville & Nashville.

Q. What classes of traffic did you work by that route?

A. All classes.

Q. How did you endeavor to work traffic from Indianapolis and vicinity?

A. Indianapolis, I think—I am quite sure that was by Cincinnati. You see, the bulk of that from Indianapolis proper was less than car-load shipments, and Mr. Connor had a car out of Cincinnati, merchandise car.

Q. How many years had that car been running—during all the time you were in the service?

5034 A. Oh, no, sir, not by any means.

Q. When was that car established?

A. According to my best recollection, seven or eight years ago.

Q. Wasn't it longer ago than that, or don't you remember?

A. I don't remember.

Q. You could not say absolutely?

A. No.

Q. I mean the car from Cincinnati, which picked up freight, what is called a package car, and assembled it there.

A. Yes; the freight was assembled at Cincinnati by Mr. Connor.

Q. Are you able to state just when that car was put on?

A. No, sir.

Q. Were you acquainted with Mr. Sproule?

A. Quite well, yes, sir.

Q. Do you remember of any time when Mr. Sproule called the traffic soliciting agents together here in San Francisco, after the so-called merger of the Union and Southern Pacific, and gave certain instructions as to the method in which business should be solicited?

A. Yes, sir.

Q. Who were present at that meeting, if you remember?

A. I thought you would ask that question, but I do not remember the names of all of them—only a few.

Q. Give such as you do recall.

A. Well, all the traffic men connected with the company, all the outside district freight and passenger agents; Mr. Gray, from Salt Lake, was brought in; Mr. Sproule—of course he was the one that called the meeting; and I should judge all together there were about 14 gentlemen present—and Mr. Fletcher.

Q. What direction did Mr. Sproule give to these gentlemen
5035 at that meeting with reference to the solicitation of business and the way the business was to be conducted?

A. My impression at this time is that in a general way he called our attention to the fact that Mr. Harriman had purchased, not the control but an interest in the Southern Pacific Company, and that as far as the Southern Pacific agents were concerned they were to be known as Southern Pacific agents and work for the Southern Pacific Company.

Q. What else?

A. And of course he says, "You don't want to throw any business away; watch our best interests in this matter."

Q. What directions, if any, did he give you as to your relations with the Union Pacific force?

A. None whatever to the best of my recollection. He did not say to me or any one there to solicit business, after this so-called merger, for the Union Pacific Railroad.

Q. Was there anything said about the Union Pacific at the meeting, any mention of the Union Pacific?

A. To my best recollection, yes; he mentioned that the Union Pacific had agents located in all the principal cities of California, as well as eastern agents, and left the impression with me that I was rather to refer these matters to their representatives in San Francisco. I was district agent at that time and looked after the agents in the interior of California, and was so instructed.

Q. I don't want to suggest an answer, but I would like to ask you a question because it is in line with something brought out at

5036 another place. Was there anything said with reference to calling the attention of the Union Pacific representatives to business which, if moved by that route, would give the larger revenue to the lines taken as a system, that is, the Union Pacific and Southern Pacific together?

A. I don't quite understand that question.

Q. Was there anything said about calling the attention of the Union Pacific agents to business which might come under the observation of your force, which might move by the Union Pacific and Southern Pacific together, and thereby yield a larger revenue for the whole system, taken as a whole, than if taken by the Southern Pacific alone?

A. I don't think there was a word said about that.

Q. What was it you said that he said about your referring certain matters to the Union Pacific agents? What were the matters to be referred?

A. In soliciting business, take it in San Francisco here, I solicited business for the Southern Pacific Company and left the routing very largely blank, and generally put the Union Pacific agent or representative (I knew them all here) on to the fact that so-andso had freight to ship. Sometimes I would post the Iowa lines as well, and very often that freight was referred, in many cases by me personally, to our eastern representatives, for business reasons.

Q. Previous to this meeting, what was your attitude as between the connections east of Ogden? What was the attitude of the Southern Pacific soliciting force as between, say, the Union Pacific and the Rio Grande and other eastern connections?

A. In the solicitation of business?

5037 Q. Yes; did you favor one over the other, or were you impartial?

A. Impartial.

Q. Did you solicit wool shipments from Nevada to the coast?

A. To a certain extent, yes.

Q. How did you move that traffic?

A. By the Sunset-Gulf route.

Q. How far east in Nevada?

A. I think some of that wool came as far as from Kelton, Utah, on account of the rates.

Q. And did wool from that same territory move east over the Union Pacific?

A. I don't recall any wool going over the Union Pacific from Nevada, not to my best recollection.

Q. Did it go over the Short Line and its connections?

A. Not that I know of. I had no opportunity to see the tonnage of wool shipments out of Nevada.

Q. At this meeting which Mr. Sproule called, in which he referred to the fact that Mr. Harriman had acquired an interest in the Southern Pacific, was anything said about the territory in which

business might originate which you were to call to the attention of the Union Pacific agencies, as you have said?

A. No, sir, because all the officials, those who were at the meeting, were familiar with that matter, and in my opinion it was not necessary for Mr. Sproule to call their attention to that. They were familiar with that work.

Q. What reason, if any, did he give for calling you together and bringing up the question of this acquisition of stock?

A. No reason particularly except——

Q. Except to tell you?

5038 A. Except to tell us that Mr. Harriman had secured an interest in the Southern Pacific; verify the newspaper statement.

Q. He confirmed the newspaper statement?

A. In substance I should think so, yes, sir.

Cross-examination by Mr. DUNNE:

Q. Mr. Prentice, freight from Pittsburg and north and west of Pittsburg: through what gateway did freight originating there move?

A. That is, the bulk of the freight move?

Q. Yes.

A. In my opinion, by Ogden.

Q. That was prior to 1901, was it not?

A. Yes, sir.

Q. When did you retire from the service of the company?

A. In October, 1906.

Q. Was the package car being operated at that time, the one you referred to in your direct-examination, over the Queen & Crescent from Cincinnati?

A. I think it was, but we did not actively solicit that business for that package car. It was rather left to Mr. Connor at Cincinnati.

Q. The solicitation was over there, at point of origin?

A. Yes.

Q. But what I was more particularly interested to know was whether the package car was being operated as late as the time when you severed your connection with the company in 1906.

A. There wasn't much said about that possibly for two or three years before, prior to my resigning from the company.

Q. Was the car in service at that time?

5039 A. I couldn't tell you positively, but I think not; I wouldn't swear to that positively.

Q. This freight, Mr. Prentice, originating at eastern points and bound to San Francisco, if that freight moved over the Union Pacific of course it could not reach San Francisco, the California coast, without passing over the Southern Pacific line, unless it went up by Portland?

A. No, sir.

By Mr. SEVERANCE:

Q. You say there wasn't much said about that package car for some time, and your impression is it was not in use at the time you left the company?

A. No, sir; I don't think it was a great success.

Q. Did you at any time, in any way, make a feature of that car, in solicitations?

A. No, sir.

Q. That was something that was left to Mr. Connor in Cincinnati?

A. Left to Mr. Connor, yes.

Q. And how about traffic originating at those enormous concerns in Pittsburg? Was that largely routed by the consignors there, like the Carnegie Steel Company and Jones & Loughlin?

A. In my opinion, nine times out of ten, yes; in fact the routing of all freight, both east-bound and west-bound, in substance, is today and has been controlled by the party who makes the price. If it is at a delivered price, of course the shipper controls the freight.

Q. But the men who originate that very large tonnage in Pittsburg, you find as a rule they route it there, don't you?

A. All those large iron concerns at Pittsburg and that territory, to my best recollection, always had representatives here in San
5040 Francisco, and in soliciting that business we were always informed—sometimes they would and sometimes they wouldn't give us pointers on orders they had received, but the matter was always referred to the shippers. It has always been my opinion that these large factories controlled the routing.

Q. Now, when you found that traffic was moving from some of the eastern centers to the coast, did you telegraph to Mr. Herring, for instance, in Pittsburg, your representative, to look after that traffic?

A. Yes, sir.

Q. And then it was their duty to call on the traffic managers of those companies?

A. Yes, sir; inform Mr. Herring or the various agents, Mr. Neimyer in Chicago, Mr. Connor at Cincinnati, that this firm or that corporation controlled the routing of ten cars of iron for somebody here.

Q. Then they would attend to the solicitation at the other end?

A. They would attend to the solicitation. Sometimes we could get a preference through friendship for various concerns here by certain routes. I have done that a great many times and secured a great deal of traffic through friendship of consignees, where they did not control it, but did it to accommodate me.

Q. You understood that the revenue of the Southern Pacific was much greater if the traffic moved from the east by New Orleans than if it moved by Ogden, didn't you, the division of the through rate from Pittsburg or the Atlantic seaboard would be much greater?

A. Yes, in dollars and cents, but so far as expense is concerned I am not familiar.

Q. I have always found in talking with railroad men that
5041 the traffic men insist they don't know anything about the expense of operation and the operating men say they don't know anything about the revenue of the traffic. Are you that sort of a traffic man?

A. Well, possibly.

Q. Your business was to get revenue for the company, wasn't it?

A. Yes, sir; study the best interests of the Southern Pacific Company all the way through, study the division-sheets, find out where the company would get the best revenue out of this.

Q. That is what I understood. And you said you were with the company about thirty years?

A. I should think so, yes, off and on. I was prior to that, before I went on the pay-roll, when I was a youngster, in Sacramento.

By Mr. DUNNE:

Q. You spoke about some business that you got yourself.

A. Yes.

Q. As a matter of personal equation, so to speak?

A. Yes.

Q. Over what routes did that business move?

A. That depended a great deal on where it originated. Lots of business I got from the southern states, you know, and naturally routed that by New Orleans because it gave us the largest revenue.

Q. But I want more particularly to call your attention to business north of the Ohio River, say Pittsburg business. Over what routes did that business move?

A. Over the central routes: principally, of course, the Union and Southern Pacific, and the Santa Fe and the Rio Grande.

5042 Q. Does that include business that you obtained to some extent through your own personality as a factor?

A. Yes, sir. I think that all these soliciting agents here, for all the railroads, have friends and have made friends here, and through their friendship they are able to get a great deal of business. That is where a soliciting agent makes himself strong with his principals.

Q. Why did that business move by the central routes rather than by the New Orleans routes—that Pittsburg business which you succeeded in attracting to some extent by your own personality?

A. Yes.

Q. What was it that caused it to take that direction, the central route, instead of going south to New Orleans?

A. In soliciting business, one of the first questions of a consignee or those interested in the freight, is to ask about time and service. Can we get cars? What time do you make? That is one of the first questions they will always ask us. And naturally we study this time question. As far as moving freight from Pittsburg by the Ogden gateway is concerned, I know for a fact—at least I will modify that and say I am quite sure it was better than by New Orleans, because we always had trouble in getting the service over the lines north of

New Orleans, that is, good service, notably the Queen & Crescent and the Louisville & Nashville and those lines; they were rather slow. The Sunset was always all right. They always made very good time from New Orleans.

Q. In respect, then, to this business, the business that you personally were a factor in securing, did you yourself
5043 suggest the routing by way of the central lines, by way of Ogden?

A. From Pittsburg territory and Chicago territory?

Q. Yes, sir.

A. Yes, sir.

Q. Now, did those conditions obtain prior to 1901?

A. Yes, sir.

Q. Have they obtained since, so far as you know?

A. So far as I know, yes.

By Mr. SEVERANCE:

Q. There is a large amount of tonnage originating in Pittsburg, isn't there, that doesn't require great speed in transmission—heavy stuff?

A. To my best recollection, you take the heaviest shippers out here of iron, and they are always in a hurry to get the freight out here. They want time, and time in a measure seems to be the essence of the movement of freight from Pittsburg.

Q. Did you ever secure freight from Pittsburg by New Orleans, to some extent?

A. I do not recall any freight that I have secured from Pittsburg by New Orleans.

Q. Well, you know of freight moving that way?

A. To my best recollection, very little.

Q. I don't mean that you secured, but you know of Herring securing lots of freight that way, don't you?

A. To my best recollection, very little, from Pittsburg proper. That was rather too far north to bring it down, on account of time.

Q. How was it in Ohio points, outside of Cincinnati? You say you worked it by Cincinnati and New Orleans. How about Columbus and Dayton and Hamilton?

5044 A. I am quite sure Mr. Connor solicited all that business by Cincinnati; I might say the towns in the immediate vicinity of Cincinnati.

Q. And by Cincinnati you mean by New Orleans?

A. Yes, sir.

Q. Mr. Hawley you knew, didn't you?

A. Quite well, yes, sir.

Q. Would the fact that Mr. Hawley testified in New York that while he was general agent of the Southern Pacific, having charge of all the business east of the Mississippi River, he endeavored to work the business from Pittsburg and Cincinnati by way of New

Orleans, change your opinion as to the policy pursued by the Southern Pacific?

A. I do not recall that Mr. Hawley endeavored to secure any business from Pittsburg and Cincinnati territory—did you say by New Orleans?

Q. Yes; that is what he testified in New York, that he endeavored to work the business that way. I wondered whether that might refresh your recollection as to the way business did move in the old days.

A. Of course we were out here in California and we were not in a position to know nor were we informed as to how Mr. Hawley routed that freight, any more than freight going from New York to Texas points.

5045 A. E. GILLESPIE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Gillespie, where do you live?

A. San Francisco.

Q. What is your business?

A. I have been the secretary of the Pacific Machinery Dealers Association for the past five years.

Q. What is your business as such secretary?

A. To arrange for the consolidation of machinery at eastern points to bring to California in carload quantities that were made up of less than carload shipments.

Q. What eastern points?

A. New York, Chicago and Cincinnati principally; occasionally some other smaller manufacturing centre.

Q. Now take business originating at Cincinnati. Did you have at any time any person in Cincinnati who acted as your agent to attend to business there?

A. Mr. W. H. Connor, the Southern Pacific agent, acted as——

Q. He was the general agent of the Southern Pacific Company there?

A. Yes; he acted as agent for us in consolidating our freight.

Q. How long ago, up to what time? Or is he still acting in that capacity?

A. Well, nominally, no, but I presume he is actually.

Q. Who is the ostensible representative?

A. At this time?

5046 Q. Yes.

A. The Panhandle Storage Warehouse Company—Pennsylvania Railroad.

Q. Did Mr. Connor go in as your agent at the same itme you were made secretary of the association?

A. No; we had a great deal of difficulty in getting freight out of that point, in consolidating cars, for several years, and it was only in 1905, in the spring, that we were able to get our first consolidated cars out of there, which we did through power-of-attorney. Some concern in Cincinnati was given our power-of-attorney at that point, and Mr. Connor arranged the consolidations and made out our papers and sent them to us, generally through the agent of the Southern Pacific Company here.

Q. When Mr. Connor commenced acting as your agent, did you leave the routing of cars in his hands?

A. Well, it generally was, yes.

Q. How did he route the cars from Cincinnati, in the first instance?

A. I don't remember whether they were sent Sunset at first or whether they were sent Union Pacific.

Q. But they did move both ways?

A. They moved both ways. It was at my request they were sent Union Pacific because we were able to get better advice of movement from the Union Pacific. The time was a little better that way, not very much.

Q. And after you made that request of Mr. Connor, did he send everything by the Union Pacific?

A. Well, service on Sunset Route commenced to be so bad that we could get no information as to location of cars, and I finally told the Southern Pacific agent that we would not stand it any longer
5047 and that they would have to route our freight Union Pacific, where we could get a little information, and they made no objection to that. That seemed to satisfy them.

Q. You told the Southern Pacific agent that?

A. The solicitors here, yes: in Mr. Luce's office.

Q. Did you notify Mr. Connor that you wanted it sent that way?

A. I did; I wrote him a letter.

Q. Or only the Southern Pacific agent here?

A. I wrote Mr. Connor personally, giving him my reasons.

Q. Previous to the time that you made this change, or made this request, had your business been solicited by the Union Pacific agency here?

A. Yes, it was solicited that way.

Q. What attitude did they take when advised by you that it was moving by New Orleans?

A. They didn't make any objections. That seemed satisfactory to them. I understood that the Southern Pacific Company's revenue was a little greater that way, and while we wanted to favor the Southern Pacific if we could, give them all the revenue possible, we wanted a little service as well.

Q. You had a little interest in it yourself?

A. Yes.

Q. Was your business from the Atlantic seaboard at times sought by the Union Pacific solicitors here?

A. No, sir; they understood it was coming Sunset.

Q. How are the rates on machinery as compared with what they were years ago?

A. The rates, the first of January, 1909, were raised 10 cents a hundred on machinery, which made quite a little additional cost to the consumer.

Q. Who has to stand that additional freight—the wholesale
5048 merchant or the consumer?

A. The purchaser.

Mr. LOVETT. That is a pretty deep economic question, i-n't it?

Mr. SEVERANCE. I want to know.

Mr. DUNNE. He says the purchaser.

WITNESS. The purchaser has to stand it.

Q. The purchaser of the machinery?

A. Well, that is included in the cost of the machinery—the transportation of it.

Q. What I wanted to get at was whether the manufacturers in the east absorbed that extra 10 cents, or whether it was paid by the consumers out here.

A. It is paid by the consumer.

Q. What was the rate before this raise? You say they raised 10 cents. What was the rate before?

A. The carload rate was $1.40 a hundred.

Q. And it is now $1.50?

A. $1.50.

Q. From what points?

A. From all points.

Q. East of the Missouri River or east of the Mississippi River—which?

A. It is a blanket rate from all manufacturing centres.

Q. What is called a postage-stamp rate over that entire region?

A. Yes; over the entire country.

Q. How many people are there in the association that you represent?

A. The association is composed of 22 members. They are all the leading jobbers in the city.

Q. And its function is to consolidate freight and get carload rates on less than carload traffic; is that the idea?

5049 A. Yes, sir, that is the idea.

Cross-examination by Mr. DUNNE:

Q. Where is the office of the Pacific Machinery Dealers Association now?

A. McNab and Smith.

Q. In San Francisco?

A. Yes, sir.

Q. How long has the office been in San Francisco?

A. Ever since it was organized; in 1904 I think it was.

Q. Have you been secretary since the organization?

A. It was organized in 1903, I should say. I have been secretary since 1904, in March.

Q. The association, then, is about six years old?

A. Yes, sir.

Q. Then, the fact is, Mr. Gillespie, that all these transactions that you have referred to with Mr. Connor in respect to the routing and direction of the freight and otherwise—all of these transactions began not earlier than 1903?

A. No, sir, not sooner than that.

5050 W. D. SANBORN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Sanborn, what is your business?

A. General agent of the Burlington Route.

Q. How long have you been in that position?

A. 39 years.

Q. Here in San Francisco?

A. About 24.

Q. As general agent what are your duties?

A. Look after freight and passenger interests for my company.

Q. Have you been in touch with the business of soliciting freight here in the city during all that time?

A. Yes, sir.

Q. And been acquainted with the different agencies who have been soliciting freight?

A. Yes, sir.

Q. Previous to the consolidation of the Southern Pacific and Union Pacific management, how did the Southern Pacific agency endeavor to route its Atlantic seaboard freight here?

A. Sunset-Gulf.

Q. Was the Union Pacific agency at that time soliciting that traffic?

A. They were soliciting traffic here, yes, sir, by Ogden.

Q. From the Atlantic seaboard territory?

A. The Union Pacific solicited that by the Ogden gateway.

5051 Q. I say were they soliciting that same class of traffic at that time?

A. Yes, sir.

Q. You were soliciting that traffic, too?

A. Yes, sir.

Q. And to whom did you deliver what you were able to secure of transcontinental business?

A. We delivered to the Southern Pacific at Ogden, Union Pacific at Denver, Santa Fe.

Mr. DUNNE. You say you delivered to the Southern Pacific at Ogden?

WITNESS. No; at Denver.

Q. Not to the Southern Pacific at Denver?

A. No; we delivered to the Union Pacific at Denver and the Rio Grande at Denver, and they in turn delivered to the Southern Pacific at Ogden.

Q. Previous to 1901 what was the attitude of the Southern Pacific here as between its connections east of Ogden?

A. Their first choice was Sunset-Gulf; second choice, the Ogden gateway, Union Pacific.

Q. What was its attitude towards the Rio Grande at that time?

A. It was friendly.

Q. Previous to that time was there any difference in the friendliness towards the Union Pacific and the Rio Grande, so far as you know?

A. They wouldn't find any fault with the Rio Grande agents getting the business. It was satisfactory to them to go Rio Grande or U. P.

Q. Your company reaches Denver, doesn't it?

A. Yes, sir.

Q. Has there been any difference in the ability of your
5052 line to secure transcontinental traffic since 1901 as compared with what it was before?

A. No, I can't say that there has.

Q. You are successful in getting as large a volume by Denver as you were before?

A. I think so.

Q. And you turned it over to what company at Denver?

A. In some cases the Colorado Midland, some the D. & R. G., some the U. P., and some the Santa Fe.

Q. How about east-bound traffic? Do you find any difference in your ability to get east-bound traffic now and what it was before 1901?

A. Well, we find that there is a little more difficulty in getting that.

Q. What gives rise to that difficulty?

A. We find that the S. P. works Sunset-Gulf as strong as ever, first choice, and the Union Pacific second, and that the Union Pacific cars are all over the coast, ready for use. We can get business that way, but we have got to rustle for it.

Q. Previous to 1901, what was the attitude of the Southern Pacific when business was moving by Ogden, on east-bound business, as between the Rio Grande connection and the Union Pacific connection?

A. They were working for the Southern Pacific Company.

Q. Were they neutral as between the connections east of Ogden?

A. Not altogether. They were more favorable to the U. P. than the Rio Grande; at the same time they would give the Rio Grande pointers.

Q. Which company turned over the most west-bound business to them at that time—the Rio Grande or the U. P.?

5053 A. I suppose the Union Pacific, probably two to one.

Q. Previous to 1901. Is it usual in railroading to reciprocate favors of that kind?

A. That is generally the custom.

Q. You said that at the present time you had to rustle for what business you got east-bound. What change has taken place: can you tell, Mr. Sanborn, why it is that you have to rustle harder than you did before?

A. The Southern Pacific agents naturally look upon the Union Pacific as part of the system and work for the long haul, so it is natural.

Q. Has that caused any diminution in the percentage of the east-bound tonnage that your line has been able to secure?

A. That is pretty hard to tell, as business is growing all the time.

Q. This country is growing very fast?

A. Yes.

Q. Do you know whether your business east-bound has kept pace with the increase in aggregate tonnage?

A. We show an increase, but whether it has kept pace or not is another question.

Q. To be serious, have you kept pace with the increase in tonnage business?

A. Well, I hardly think so.

Q. That is what I thought.

(No cross-examination.)

5054 GEORGE LANG,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Lang, what is your business?

A. I am in the automobile business?

A. Were you ever in the railroad business?

A. Yes.

Q. In what capacity?

A. In freight and passenger.

Q. With what companies?

A. With the Union Pacific Company.

Q. When?

A. From 1888 till 1906, I think.

Q. Where were you stationed, Mr. Lang?

A. I started in the service of the Union Pacific at Spokane, Washington. I was there about four years and a half. Then I was trans-

ferred to Portland, in charge of passenger matters there. I was there about three years and a half, and from there I was transferred to Salt Lake City. I was there about two years and a half. Later I was returned to Portland, and from Portland to Los Angeles, where I represented the company about two years and a half.

Q. What years was it that you were in the passenger business at Portland?

A. From 1895 till 1900—at the close of the office. About 1900 I think it was.

Q. Till they closed the office?

A. Yes.

Mr. DUNNE. Where was that, Mr. Lang?

WITNESS. At Portland.

Q. During the time that you were there for the Union Pacific what was your position?

5055 A. I had charge of the passenger department there—ticket agent.

Q. What were your duties?

A. Soliciting. Booking passenger business.

Q. What class of passenger business?

A. All classes of passenger traffic.

Q. Including transcontinental?

A. Including transcontinental, yes.

Q. Did the Southern Pacific have a similar agency there?

A. Yes, sir.

Q. And the Oregon Railroad & Navigation Company?

A. Yes, sir.

Q. Oregon Short Line?

A. Yes, sir.

Q. All separate at that time?

A. All separate; yes, sir.

Q. And were they engaged, all of them, in the same general business that you were?

A. The same pursuit; yes, sir.

Mr. LOVETT. Mr. Severance, I didn't catch just what period this was.

Mr. SEVERANCE. From 1895 up to the time the office was closed, which he said was in 1900.

Q. Now, after 1900 you say you came to San Francisco—after that office was closed?

A. 1900 I was appointed general agent of the freight and passenger department of Los Angeles.

Q. At Los Angeles?

A. Yes, sir.

Q. Were you ever soliciting freight in San Francisco?

A. For a time.

Q. When was that?

A. From 1902 until, I think, about the fire.

5056 Q. Do you remember the Sunset Limited passenger train?
A. From San Francisco?
Q. Yes.
A. Yes, sir.
Q. That train ran through to New York, did it?
A. I believe as far as New Orleans.
Q. Didn't it continue on over another route?
A. Well, you understand I wasn't in the passenger department at San Francisco.
Q. You don't know about that?
A. No.

Mr. LOVETT. Mr. Severance, to clear up your information about that, I will say that the Sunset Limited never ran farther than New Orleans. There was a specially equipped train run between San Francisco and New Orleans, and on certain days of the week they would have through tourist sleepers to New York which connected at New Orleans, but it was different equipment entirely from the regular Sunset Limited. It put these tourist cars in the train I think one or two days in the week.

Mr. SEVERANCE. I understood, of course, that the whole train did not go through, but I understood part of the train did go through. It was the tourist sleepers? You didn't run Pullmans through?

Mr. LOVETT. I understand not.

Mr. SEVERANCE. I understood they ran Pullman sleepers.

Mr. LOVETT. I wouldn't be positive about that.

WITNESS. I rather think the standard or first-class sleepers went as far as New Orleans, and on certain days a personally conducted tourist car went through to New York.

Mr. LOVETT. The Sunset Limited, as we knew it, was a
5057 specially constructed and equipped train, of high-class cars, that ran between San Francisco and New Orleans, and sometimes would carry these tourist sleepers.

Q. Isn't there a train called the Washington Sunset that runs from here to Washington—with Pullman cars running through to Washington?

A. I rather think that refers to the tourist sleepers; personally conducted sleepers, I think.

Q. The tourist sleepers carry a great many passengers, don't they?

A. They are very well patronized; yes, sir.

Q. Now, at the time you were working passenger business for the Union Pacific (transcontinental passenger business), was business being solicited by the Southern Pacific for this Sunset train—transcontinental business?

A. Yes, sir; at Portland.

Q. How?

A. Yes, sir.

Q. It appeared in some of the testimony here that on passenger business there are more or less round-trip tickets sold, going one way and returning another; that is true, isn't it?

A. A great deal of it; yes, sir.

Q. Was it part of the duty of yourself and these other agencies that you spoke of, to endeavor to secure travel one way at least by these round-trip excursions?

A. Yes.

Q. What methods are commonly employed and were employed at that time by these different agencies to secure passenger business?

A. Well, there it is a question of going after it, looking it up, soliciting it.

Q. Advertising the lines?

A. Advertising—different mediums, getting in contact with
5058 the business, and keeping after it until it is either secured or some other agent has booked it.

Q. What did those agencies at that time have to do with what is called the emigrant business?

A. Well, we booked a great deal of European emigrant business, sometimes prepaid business.

Q. Did these other lines do the same thing?

A. Yes, sir.

Q. That would be from where? From New York and other Atlantic ports to the coast?

A. They were usually booked from the European port in starting.

Q. Right through?

A. Yes.

Q. Was that business the subject of competition or solicitation of the different agencies?

A. Yes, sir.

Q. You say they sometimes prepaid. Explain what you mean.

A. People here send the tickets over to Europe and bring the people over. They bring their friends or relatives over.

Q. Is that quite a considerable part of the emigrant business?

A. A good deal of it; yes, sir; that is the inbound business.

Q. Is there from this part of the United States some second-class passenger traffic back to Europe?

A. Yes, sir.

Q. Is that an all-year-round business, or is it by seasons?

A. It is continuous; all seasons of the year.

Q. From what ports does this business move by sea? I mean after it reaches the seaboard.

A. New York, Philadelphia, Baltimore, Boston, Quebec, and Halifax.

Q. And does some of it move from Gulf ports?

A. Yes, Gulf ports.

5059 Q. New Orleans, Galveston?

A. Galveston.

Q. Galveston and Mobile?

A. Galveston and Mobile; yes.

Cross-examination by Mr. DUNNE:

Q. Have you any figures which would express with any degree of accuracy the volume of that emigrant passenger business to or from Portland?

A. No; I have not. It is some years ago that I was there.

Q. By the way, you spoke in reference to the solicitation of passenger business; you spoke of advertising the routes. What do you mean by that? In a general way, how did you advertise the routes?

A. Newspaper advertising or folder or sheet advertising—poster.

Q. Were there any points to which your advertisement was directed?

A. Calling attention to the advantages of the line, of course—such offers as we had to make.

Q. Just in what respect?

A. Time, service, through car service and all such as that.

Mr. SEVERANCE. Scenery, I suppose?

Q. That plays a very important part also, doesn't it, in the passenger business?

A. It has its effect; yes; with tourists for pleasure.

5060 R. G. GUYETT,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Guyett, where do you live?

A. Palo Alto.

Q. What is your business?

A. Insurance broker.

Q. How long have you been in that business?

A. Since January 1, 1904.

Q. Previous to that what was your business?

A. I was chief clerk for the Union Pacific from September, 1892, until that date.

Q. Whereabouts?

A. San Francisco.

Q. And previous to that what was your business?

A. I was ticket clerk for a year previous to that, with the Union Pacific.

Q. And before that?

A. Yes. I went with the Union Pacific May 1, 1891, as ticket clerk, clerk in the ticket office.

Q. 1891?

A. Yes, sir.

Q. How long did you occupy that position?

A. One year.

Q. And after that what were you?

A. Chief clerk for 12 years.

Q. Oh, 12 years? I misunderstood you. I understood you were chief clerk only for two years.

A. For 12.

Q. Chief clerk in what department?

A. Passenger.

Q. At San Francisco?

A. Yes, sir.

Q. Previous to the consolidation of the management of the
5061 Union Pacific and Southern Pacific, what percentage, would you say, of the passenger business moving through Ogden went Union Pacific?

A. 35 to 45; some months probably reached 50.

Q. After 1901 what percentage would you say moved Union Pacific?

A. I think after that time it showed a gradual increase in favor of the Union Pacific until possibly some months the percentages would be reversed from what they were formerly; in other words, the Union Pacific would receive possibly as high as 55 percent.

Q. What occasioned the change?

A. I presume it was the knowledge on the part of the Southern Pacific agents that the Union Pacific was a part of the family and they naturally favored the route as against the Denver & Rio Grande.

Q. Previous to that time, what had been the attitude of the Southern Pacific as between the Rio Grande and the Union Pacific?

A. I think their position was neutral as far as I was ever able to learn. I never knew of any instructions being issued to the agents to favor either road.

Q. Are local agents in handling tickets able to influence the routing of passenger traffic?

A. Yes, sir.

Q. To a considerable extent or a small extent?

A. Quite an extent.

Q. What efforts were put forth by the Union Pacific during the years you were with them to secure passenger traffic over that line? What class of efforts?

A. Every effort possible, that is, within the means of the company, consistent with good business organization.

5062 Q. Yes, I can understand that.

A. They maintained two traveling men, one in the northern part of the state and one in the southern, to solicit business wherever they heard of it moving, and there was a passenger office in Los Angeles and one in San Francisco to pursue the same course—to go after business wherever they could find it.

Q. In going after business that way, do you mean after isolated travelers, or where parties were moving, or emigrants moved, or what?

A. One or one hundred.

Q. One or one hundred?

A. It all counts for the company.

Q. Was that same policy pursued by the Southern Pacific in soliciting business, and by the other lines here?

A. I would say generally, yes; that is, the Southern Pacific have always maintained one or more passenger men in the field to solicit for their interests as against the Santa Fe, and all other lines have had from one to three passenger men soliciting.

Q. Do you remember the train called the Sunset Limited train?

A. Yes, sir.

Q. When was that put on, if you remember?

A. That was put on, it seems to me, somewhere around 1897 or 1898; it has been on for many years, I know. Possibly before that.

Q. What kind of a train was it?

A. It was a strictly first-class Pullman equipment train.

Q. Was that train largely advertised?

A. Yes.

Q. By what means of advertising?

A. By bill-boards, posters, newspaper advertising.

5063 Q. Magazine advertising?

A. Yes.

Q. And was travel by that route to the east worked by soliciting agents, too?

A. I think it was, very thoroughly.

Q. When you were working for the Union Pacific did you meet with activity on the part of the Southern Pacific?

A. Yes, sir.

Q. To move the business by that Sunset Limited train. Did they secure substantial business that way?

A. During the winter months, owing to the climatic conditions, and it being a change of route for the business men, they secured a very nice business for the Sunset Limited.

Q. I suppose the time to New York would be longer that way, wouldn't it, than by the direct routes to the east?

A. Yes.

Q. What do you know about the solicitation of immigrant business?

A. You mean——

Q. How was that business secured—European immigrant business?

A. Coming to California?

Q. Yes.

A. I think that was handled largely by the various European-Italian agents, as we would call them.

Q. Did the passenger departments of the various lines running to ports in the east work that business through these agencies that you speak of, soliciting the business from these agencies?

A. I think that was all handled by the agents themselves on a commission basis and they worked it as they saw fit; in other words, I would say there was probably a uniform commission paid by the different roads for that business.

5064 Q. That is, the different railroads that ran trains from San Francisco, we will say, to the ports on the Atlantic or to the Gulf ports, were paying commissions to those immigrant agencies to get the routing of business?

A. Yes.

Q. Is that right?

A. That was prior to 1900, I think.

Q. Was there considerable traffic of that sort moved out here?

A. You are speaking of east-bound business, are you?

Q. No; I am speaking of west-bound now—coming from Europe.

A. At times there was quite a volume of westbound immigrant business.

Q. Now, take east-bound business; was there a considerable emigrant business back to Europe?

A. Not a great amount. It went back as second class. It didn't go as emigrant. We were not able to keep any line on it.

Q. I suppose, as a rule, when anybody gets to California he stays if he can, anyway?

A. Well, he makes so much money he can go back first-class.

Q. How about the business known as the "tourist business," the winter tourist business? Was that business actively worked by all the routes?

A. Winter tourist business would be west-bound.

Q. Yes.

A. And we would have nothing to do with the handling of that from this territory.

Q. That would be all solicited at the other end?

A. Yes.

Q. Was there a considerable movement of passenger traffic to the east from Los Angeles by way of El Paso?

A. From Los Angeles to the east?

Q. Yes.

5065 A. I wouldn't be able to say what the volume was. I don't know that we ever had any report as to that business and its divisions. I know the Union Pacific received a small share of the business, but we had to work hard for it.

Q. A small share of the business from Los Angeles?

A. To the east, via Sacramento and Ogden.

Q. But most of it went the other way, did it?

A. Yes; being the natural route. The Santa Fe and the Southern Pacific, I think, divide the business up pretty generally from that territory.

Q. Did the Union Pacific have an agency in Los Angeles?

A. Yes.

Q. Working that business?

A. Yes.

Cross-examination by Mr. DUNNE:

Q. How did that business go from Los Angeles east over the Union Pacific?

A. Southern Pacific to Sacramento, or else the coast line through San Jose and Ogden—Central Pacific route.

Q. The Southern Pacific got a haul of about 500 miles from Los Angeles to San Francisco, didn't it, and about 830 miles from San Francisco to Ogden?

A. Yes, sir.

5066 JOHN McEWING,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. McEwing, where do you live?

A. In Oakland.

Q. What is your business at present?

A. Traffic manager for Dunham, Carrigan & Hayden Company.

Q. What is their business?

A. Wholesale hardware, iron and steel.

Q. How long have you been in that position?

A. I have been in it twice. I went there first in September, 1906.

Q. Previous to that what had been your business?

A. Union Pacific, O. R. & N., Short Line—soliciting freight.

Q. For how many years?

A. I went on the street for the O. R. & N. in 1898; our office was absorbed by the Union Pacific in 1901, and I continued in the joint employ until September, 1906.

Q. Who was the general agent of the O. R. & N. when you first went with them?

A. E. C. Ward was general agent here.

Q. He was then their agent?

A. He and I went to the general agency together; he went in as general agent and I went in as contracting agent at the same time.

Q. And whom was he succedeed by?

A. That office was closed and the entire force went into the Union Pacific office March 1, 1901; Mr. Ward in charge of the O. R. & N. forces in the same office until April 15, 1901, I think; and Mr. Schumacker took charge of the entire freight force of both offices.

5067 Q. When you were freight solicitor for the O. R. & N., was it any part of your business to solicit business to Montana points?

A. Yes, sir.

Q. By what route did you solicit that business?

A. Preferably through Spokane in connection with the Great Northern or the Short Line by Huntington, or lastly, Northern Pacific by Wallula, as that gave us the shortest haul.

Q. And you moved it to Portland by boat line?

A. Yes, sir.

Q. Was the Northern Pacific engaged in competition for that business at that time?

A. Very decidedly.

Q. How did they move their business, aside from that which you gave them?

A. They preferred it via Tacoma. Their first preference was via Tacoma, as that gave them a longer haul; but, secondly, they worked it via Wallula, in connection with our line.

Q. Was the Southern Pacific engaged in that?

A. By Ogden, and some business through Portland in connection with the Northern Pacific; mostly through Ogden.

Q. What was the nature of that traffic which moved to Montana points?

A. California products—wine, canned goods, dried fruit, sugar, salt, principally.

Q. Was this competition between these different routes an active one for that business?

A. Yes, sir.

Q. And on an equality of rates?

A. Yes, sir.

Q. How was it as to traffic destined to points in the vicinity of Boise, Idaho?

5068 A. We worked that by Portland. The Southern Pacific, I believe, worked it at that time via Ogden.

Q. Do you remember the time that it became publicly known that the Union Pacific and the Southern Pacific had come under common traffic management, when Mr. Stubbs took charge of the traffic of both lines?

A. Yes, sir.

Q. Previous to that time were you working freight business for the Union Pacific here?

A. No, sir.

Q. You were not?

A. No, sir.

Q. What was the situation as to business between here and Portland, as between the Shasta Route of the Southern Pacific and your boat line? Was that business being sought by both routes?

A. Yes, sir; not very actively by the Southern Pacific.

Q. Did they carry traffic between here and Portland?

A. Very little.

Q. What class?

A. Whatever they could get. I don't think they got very much.

Q. You say they didn't get very much?

A. I don't think they got very much at that time.

Q. They got what they could?

A. Yes, but I don't think they got very much at that time. I said; the boat line had pretty much the best of it.

Q. You had a pretty active soliciting department of your own here, hadn't you?

A. Yes, sir.

Q. And you had a differential rate?

A. Yes, sir.

Q. What was the boat service at that time?

A. Five-days service regularly, with sometimes in the win-
5069 ter season, when the grain was moving south very heavily, an extra vessel between times, plugging in as she could make it.

Q. How about the passenger business between here and Portland? Did that move both ways, too?

A. I wasn't interested in that; I had nothing to do with the passenger business. Of course it moved, I know that; that is, it moved on the regular service, the five-days' service. The extra freight steamer didn't carry any passengers.

Q. What is the service now?

A. I think it is weekly.

Q. Since you have become the traffic manager of Dunham, Carrigan & Hayden, how does your traffic move from the seaboard territory?

A. Very largely by American-Hawaiian and Panama.

Q. How long have you been moving traffic by the American-Hawaiian line—ever since you have been with them?

A. Yes, sir.

Q. Had the Tehuantepec route been opened when you became traffic manager of this firm?

A. Yes.

Q. What is their time from New York here?

A. Tehuantepec?

Q. Yes.

A. It runs from 25 to 40 days. It will average about 31 or 32 days.

Q. What is the time by the Panama route?

A. About 10 days slower.

Q. How do the rates by the Panama route compare with those by the American-Hawaiian?

A. Well, they vary; some commodities are cheaper by the Panama and others cheaper by the American-Hawaiian. Of course
5070 you understand the Panama have a differential off the transcontinental all-rail rates, while the American-Hawaiian seems to make rates entirely ignoring those conditions.

Q. That is, the Panama route rate is the transcontinental rate less a certain differential?

A. 30 and 40 per cent.

Q. What is that?

A. 30 per cent off less than carload and 40 off carloads, with the exception of a few commodity rates.

Q. How are those commodity rates?

A. They have about a dozen commodity rates out of New York on which there is an absorption, that seem to have no reference to the trans-continental rates.

Q. That are made irrespective of the trans-continental rates?

A. Yes, sir.

Q. Do you ship all-rail and Sunset or chiefly by boats?

A. We ship all-rail; we do not use the Sunset-Gulf route.

Q. When you use any boat line, you use the American-Hawaiian or the Panama route?

A. Yes, sir.

Q. How has the American-Hawaiian line been as to the solicitation of business—active or otherwise?

A. I have never seen one of their solicitors out at the store.

Q. What?

A. I have never had a solicitor call on me.

Q. Of the American-Hawaiian line?

A. No, sir.

Q. They don't keep solicitors on the street?

A. Yes, sir; but they never call on me. I happen to know him. I meet him sometimes on the boat, but he has never called on me soliciting business.

Q. The business you move that way is controlled——

A. Controlled by the rates.

5071 Q. Controlled by the rates and not by solicitation. Which way do you move the most business—American-Hawaiian or Panama route?

A. It varies. Some months it will run more by one, and perhaps the next month be reversed. About half-and-half, I should judge, through the year.

Q. Do those steamship lines absorb locally into New York, the same as the Sunset Route does?

A. The Panama does, with the exception of those commodity rates I referred to.

Q. I don't know as I quite get what you mean. You said there was no absorption.

A. There are about a dozen commodity rates that they publish in their tariff out of New York on which there is no absorption; that is net.

Q. That is New York proper?

A. New York proper. While from some other points they will absorb up to 20 cents, maintaining a minimum of 40 cents. I think it is.

Q. Then they absorb from the interior except in the case of these few commodities?

A. Yes, sir.

Q. To the same extent that the Sunset Route does?

A. Presumably. I don't know what their absorption is. I don't use that line.

Q. How far east of here do you job your goods?

A. The rates break even over about Winnemucca, or close to that point, in Nevada, about 400 miles.

Q. Did the recent increase in rates affect your business?

A. I can't see that it has.

Q. I mean does it affect the goods that you handle? Does it cover the goods you handle?

A. Does the increase cover the goods we handle?

5072 Q. Yes.

A. Oh, yes.

Q. And what is the effect of that increase? Does it come out of the eastern manufacturer or out of the consumer here on the coast?

A. It depends on how the goods are sold. If they are sold f. o. b. San Francisco it comes out of the manufacturer unless he adds that to the cost. Otherwise I presume it comes out of the consumer.

Q. Do you happen to know whether in case the goods are sold f. o. b. here the price has been increased?

A. I couldn't say: that doesn't come under my observation.

Q. You don't know as to that?

A. I don't know.

Cross-examination by Mr. DUNNE:

Q. Did I understand you to say that the boat lines did not solicit your business?

A. I don't recall ever having either a Panama or American-Hawaiian solicitor call on me.

Q. In what way does your business principally move—by the water?

A. You mean the entire movement of goods from the east?

Q. Yes.

A. Oh, no. A large percentage of them move by water: pretty close to half of it probably moves by water.

Q. How much of that moves by the Panama route?

A. I stated that I could not say: sometimes it is one way and sometimes another: possibly it will even up, about 50 and 50 between the Panama and the American-Hawaiian.

Q. The fact then is that 50 percent of your business moves by the water, and of that 50 percent about one-half will go the Panama route and one-half the Hawaiian?

5073 A. About that, roughly speaking.

Q. Is that purely fortuitous, accidental, or is there any explanation for this division of the business between the Hawaiian route and the Panama route?

A. It is only a question of rates and condition and time.

Q. The rates being what they are, the conditions being what they are, and the time being such as the Panama and the American-Hawaiian routes make it, the Panama route takes half your business, doesn't it—half of the water business?

A. I should say about half, roughly estimating.

Q. That is doing pretty well for a bunch of tubs, isn't it?

A. Pretty well.

Q. Now, with reference to the Shasta Route and the boat lines. I understood you to say to Mr. Severance that the Shasta Route got very little of that business, that most of it went by the boat-lines between here and Portland.

A. At that time, when I was soliciting.

Q. Why was that? Why was it that the water got pretty much all the business?

A. On account of the differential and on account of the time.

Q. What was the difference in time?

A. We were making Portland in about 52 to 54 hours by passenger steamers, making passenger time, while I never knew a shipment—and I placed a good many of them that did move all-rail—to make it in less than 4 days and from there up to 7 and 8, more likely to be 7 and 8 than to be 4.

Q. Did the railroad make any special effort to get that business and to mitigate those conditions or modify them?

5074 A. Well, I don't know——

Q. Did they actively seek the business?

A. Not as a rule.

Q. With reference to the Montana points and business moving over the Southern Pacific rails by way of Ogden into Montana points and Idaho, how did that business reach destination after passing through the Ogden gateway?

A. Over the Utah Northern, or otherwise known as the Short Line now, to Butte.

By Mr. SEVERANCE:

Q. Speaking again of this business between here and Portland: the boats ran every five days and took two and a half to get up there. That would be 7 days and a half from the time that one boat had left until the cargo of the next boat reached Portland. The Shasta Route ran freight trains every day, didn't it?

A. A train out every night, I believe.

Q. If they got through in four days, there was certain traffic that could reach there by the Shasta Route quicker than by boat?

Mr. Lovett. Do you mind elaborating that method of counting time? I don't follow it.

Mr. SEVERANCE. He said the boats ran every five days.

Q. Now, I say, starting with the departure of a boat, until the time the traffic on the next boat reached there, would be seven days and a half—5 and 2½. The Shasta Route ran a train every day. Traffic offering on the day after your boat left would get to Portland two or three days sooner on the four days' service by the Shasta Route?

A. I said it was very rarely they made it in four days. I never knew them to make any better than that, and it was

5075 only occasionally I found them making four days.

Q. Was the Southern Pacific a fairly well managed railroad, as a rule, or did you think it was at that time?

A. I thought it was, yes, sir.

Q. You were affiliated with a different system at that time?

A. Yes, sir.

Q. You said, I believe, that you knew nothing about the passenger business between here and Portland.

A. No, sir.

Q. Now, you seem to have surprised my learned friend in the testimony as to the amount of business you were giving to the "bunch of tubs" that he spoke of.

Mr. DUNNE. He surprised you.

Q. Is there anything in the rate by the "bunch of tubs" that caused you to give them the business?

A. Well, it is rate and time.

Q. You say the time is ten days longer than the American-Hawaiian?

A. Yes. If the rate is lower and it pays us to wait the ten days, why——

Q. That is to say, the rates, as I understand, by the American-Hawaiian line are fluctuating rates?

A. Yes, sir.

Q. And they go up and down depending on the amount of cargo offering, don't they?

A. Well, not so much that. They do fluctuate considerably, but I don't know whether that is the reason for it or not. But on certain commodities we can do better by Panama than we can by American-Hawaiian. Generally certain commodities move by
5076 the different lines on account of rate conditions, and if we can wait we generally try to figure on the additional time by the slower route.

Q. And the Panama gets about half your business?

A. I should say so, yes, sir; that is, half of the water business.

Q. That is what I mean. That would be about 25 percent of your entire eastern business?

A. Yes, sir.

Q. Because of its rates?

A. Yes, sir.

Q. Did you ever check up to find out how much of that time is consumed in getting the goods from New York to Panama——

A. No, sir.

Q. And how much between Panama and here?

A. No, sir. There is no way of finding that out. We never know what steamer——

Q. I didn't know but what you might have traced shipments.

A. No, I have not.

5077 W. N. ROLPH,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Rolph, what is your business?

A. Secretary of Griffith Derney Company.

Q. What is the business of that company?

A. Handlers of canned goods.

Q. What class of canned goods?

A. Canned fruits, canned salmon.

Q. Most anything that grows in cans?

A. Anything in cans, yes, sir.

Q. Do you make shipments of canned goods to the east?

A. Yes, sir.

Q. What classes of canned goods—all classes?

A. Well, from here there are only canned fruits, canned asparagus, and canned salmon.

Q. Do you ship abroad too?

A. Yes, sir, large quantities.

Q. Out of what ports does your business move in this country?

A. Principally from San Francisco and other common points in California; also a good many shipments from Puget Sound.

Q. I mean shipments to Europe go what way—around the Horn?

A. Yes, sir.

Q. Do you ship anything to Europe by the Atlantic seaboard?

A. Occasionally, when the market warrants it. We shipped quite a lot last year.

Mr. DUNNE. Do you mean by rail to Atlantic seaboard?

5078 Mr. SEVERANCE. Yes, and thence by boat.

Q. What condition of the market is it that governs that—the necessity of quick delivery, or something of that sort?

A. When the market on the other side is bare of canned goods and the price is low here, they want goods in a hurry and they order them overland—what they call overland, and pay a higher price to get them there in a hurry.

Q. In that case how do you move your traffic—to New York?

A. Last season we moved it all via Southern Pacific Company, Sunset-Gulf route to New York, and thence by steamer.

Q. On your shipments to the east over what routes have you shipped? I don't mean the European business, but business to points in the seaboard territory.

A. Up until two years ago we shipped most of our goods via the Santa Fe. Since then we have been shipping quite a lot of goods via Southern Pacific and Union Pacific, Ogden gateway.

Mr. DUNNE. Since 1903 or 1905?

Mr. SEVERANCE. The last two years, he says.

WITNESS. I am just speaking of recent years.

Q. Is your business solicited by the Union Pacific-Southern Pacific people?

A. It is solicited by all railroad people.

Q. Do you use the American-Hawaiian line?

A. Very little. We are using it a little now.

Q. On what class of business?

A. Canned fruits to New York.

Q. What time do they make from here to New York? We have testimony as to the time the other way.

A. The time in transit is usually about an average of 30 days; that is, from here.

5079 Q. Do you ship to Montana points?

A. Very little. We have shipped some goods that way.

Q. By what routes?

A. Pacific Coast Steamship Company, cars of the Northern Pacific or the Great Northern at Puget Sound.

Q. Have you ever shipped by the Southern Pacific?

A. Not that I remember. We haven't done very much business up in Montana.

Q. Where do you get your canned salmon that you handle?

A. From Alaska and from Puget Sound; principally from Alaska.

Q. I believe the witnesses have stated that at present the boat line controlled by the Oregon Railroad & Navigation Company has only a weekly service. Is that your understanding?

A. That is my understanding, yes, sir.

Q. How many steamers have they in the service?

A. Two boats.

Q. Do you remember at any time when they had a more frequent service?

A. I remember that they used to have a five-days' service. I don't know how many steamers they had. I think they only had two steamers then.

Q. Well, more frequent service, five days' service?

A. Five-days' service, yes; it is now every seven days.

Q. Do they bring salmon down to you?

A. Very little. Very little salmon comes down here from the Columbia River; it is shipped direct from there.

Q. And moves east by Portland?

A. Yes, sir.

Q. Do you use the Panama Route at all?

A. We use it very little. We are just making a shipment

5080 via Panama now. We have always tried to avoid shipments by water, on account of the uncertainty of getting car numbers on the bills of lading, and longer in transit.

Q. Did this recent increase in freight rates affect the commodities that you handle?

A. Yes, sir.

Q. How much of an increase was there?

A. 10 cents a hundred pounds. The rate on canned goods was advanced from 75 cents to 85 cents.

Q. As to the goods that you handle, going to Europe, has that advance in trans-continental rates made a difference in the rate to Europe?

A. That was advanced, yes, sir. The rate was advanced in the same proportion.

Q. What competition do you meet in Europe with your goods, from what countries?

A. Oh, very little. There is sometimes some wine competition from Spain; and when they have a good crop of apricots in Spain it makes a difference with our sales. But outside of that there is very little competition.

Q. You don't handle dried fruits?

A. No, sir.

Q. Only canned goods?

A. Only canned goods.

Q. What difference did that increased freight rate to the eastern markets and to the European markets cause to the producers of the traffic that you handle, if any?

A. They have really got to stand the advance.

Q. So it is the California producer of the canned goods that stands that advance?

A. Yes, sir.

(No cross-examination.)

5081 C. R. MORSE.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Morse, where do you live?

A. Berkeley, California.

Q. What is your business?

A. I am secretary of the American Trading Company.

Q. What is the business of the American Trading Company?

A. Export and import.

Q. What classes of commodities?

A. Everything, but principally lumber, wheat, flour.

Q. Do you import from the Orient?

A. Yes, sir.

Q. What classes of goods?

A. Sulphur principally from Japan, bags from Calcutta, burlaps and other jute fabrics.

Q. Were you ever over in Japan or any place in the Orient?

A. Yes, sir.

Q. How long were you there, and when?

A. I went to Japan in 1896. I was there until 1902.

Q. What was your business while you were in Japan—with the same company?

A. The same company, yes, sir. I was in the export department of the American Trading Company there; had more or less to do with the export.

Q. Exports from Japan to this country?

A. Yes, sir.

Q. At that time were you familiar with the steamship lines carrying traffic from Japan to this country?

5082 A. I have not a very distinct remembrance as regards Pacific shipments. Most of the shipments went via Suez. Most of our business was with New York and Europe.

Q. Did you know of the Pacific Mail and the Portland-Asiatic lines at that time?

A. I knew there were such lines. We occasionally had shipments to San Francisco; very seldom had shipments across the continent.

Q. Did those two companies have agencies over there, soliciting business?

A. I believe they did, yes, sir.

Q. Did you see their agents?

A. I saw the Pacific Mail agents; we shipped only by the Pacific Mail, as I remember.

Q. At what places were you stationed in Japan?

A. I was in Yokohama first, but only for a short time, and then in Kobe.

Q. Who was the agent of the Pacific Mail at Yokohama and Kobe at that time?

A. I believe it was Mr. Howard; I am not sure. I don't remember Yokohama very well.

Q. Who was the agent of the Portland & Asiatic?

A. I don't know, sir.

Q. Has any of your business from the Orient at any time come by the Portland-Asiatic line to Portland?

A. Does it at present, you say?

Q. Your traffic from the Orient: I say does it come by the Portland & Asiatic line to Portland at times?

A. Yes, sir.

Q. How does it reach San Francisco, if it comes here at all?

5083 A. The only shipments we have by the Portland & Asiatic are shipments from India, bags and so on, and sulphur from Japan. I believe the Portland & Asiatic run direct to Portland. Occasionally they stop at San Francisco first.

Q. Do they sometimes bring traffic to you which is destined to San Francisco?

A. Via Portland, you mean?

Q. Yes; bring it down by boat from there.

A. I don't remember of such an instance.

Q. I asked you if you knew the agent of the Portland & Asiatic at Yokohama, and you said you didn't remember.

A. I don't remember.

Q. Do you know who their agent was at Kobe?

A. No, sir.

Q. Does any traffic of your company destined to New York come through Portland?

A. I couldn't tell you, I am sure. The American Trading Company in New York is our head office, and their business is done direct

with our oriental offices. At the present time I know nothing about it except in a general way.

Q. Do you know whether at the time you were over there any traffic moved to New York by Portland?

A. Occasionally; small shipments, but very little.

Q. You are still importing to San Francisico, are you?

A. Yes, sir.

Q. Do steamship agents call on you here and solicit business?

A. Yes, to some extent.

Q. Who represents the Pacific Mail organization, calling on you?

A. Mr. Scherr, principally, is the only man I know personally.

Q. How do you spell it?

A. S-c-h-e-r-r.

5084 Q. What company does he represent outside of the Pacific Mail, if you know?

A. I don't know that he represents any other.

Q. You don't know?

A. Personally, no.

Q. Does your company import silks?

A. Our New York house does, yes, sir. We have had little orders, that don't amount to anything.

Q. The principal office is in New York?

A. Yes, sir. I don't say the principal office, but our head office is there.

Cross-examination by Mr. DUNNE:

Q. What years were you in Yokohama and Kobe?

A. I was in Yokohama in 1896, until about the middle of 1897; the rest of the time in Kobe.

Q. Until when?

A. 1902.

Q. Was there any Portland & Asiatic Company agent in Yokohama when you were there?

A. I don't remember.

Q. How about Kobe? Do you remember about there being such a person there?

A. My impression is that there was, but I wouldn't swear to it.

Q. You would not state positively that when you were at Kobe and Yokohama there was a Portland & Asiatic agent at either place?

A. I would not, no, sir.

Q. When did you return to the San Francisco office?

A. In 1902.

5085 Q. Have you received any shipments from the Orient by the Portland & Asiatic since that time?

A. I don't think we have ever received any to San Francisco; we have had shipments up north.

(A recess was here taken until 2 o'clock p. m.)

5086 ISIDOR JACOBS.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Jacobs, where do you live?

A. San Francisco.

Q. What is your business?

A. President of the California Canneries Company and president of the Napa Cannery Company.

Q. What is the business that is carried on by the California Canneries?

A. Fruit canning.

Q. All kinds of fruit?

A. Yes, sir.

Q. Where do you market your product?

A. All over this country, various parts of the country, and in Europe.

Q. How does your traffic move to Europe?

A. It has been going by sailing vessel up to last year, but a large quantity last year went overland via New York, and some went by the American-Hawaiian Steamship Company, and also by a French line.

Q. From here?

A. Yes, sir. Large quantity by sail also.

Q. Now, you say you market your product all over the country as well as abroad. How does your traffic move to the Atlantic seaboard from here?

A. A great deal of it goes now by the American-Hawaiian Steamship Company, but some overland.

Q. Calling your attention to the time previous to 1901, when the Union Pacific and Southern Pacific came under the same man-
5087 agement, how did your traffic mostly move at that time to the seaboard?

A. Mostly by the Sunset line; practically all of it by the Sunset.

Q. Was your traffic solicited at that time by the representatives of the Southern Pacific?

A. Yes, sir.

Q. By what route?

A. They made a greater effort to get the freight on the Sunset than any other line.

Q. Did the Union Pacific have a soliciting agency here at that time?

A. Yes, sir.

Q. Did they solicit your traffic by their route?

A. Yes, sir.

Q. When your business moved Sunset, did it go boat and rail or all rail?

A. It went rail to New Orleans and then I think on the Morgan Line of steamers to New York.

Q. Where do your shipments originate?

A. In San Francisco and in the city of Napa, but we did not have the cannery at Napa in 1901.

Q. Only at San Francisco?

A. Yes, sir.

Q. Have you ever used the Pacific Mail and Panama route?

A. No, sir.

Q. Never have at any time?

A. Never have.

Q. Is your product a product that can just as well be shipped by water as by rail?

A. Yes, sir.

Q. It doesn't make any difference?

A. No, sir.

Q. How do you find the service by the American-Hawaiian line?

A. Very good.

Q. What is their time from here to New York?

A. It varies some; we ship freight to New York in 21 days; I think once they got the freight through in 20 days.

5088 Q. What is the rail time through?

A. That varies a great deal. It has been as low as 14 days and it has been up as high as three months, at different times.

Q. When it was as high as three months, that was very unusual, wasn't it?

A. That was a very unusual case, when there was a congestion, I think it was the year before last; but as a rule we used to figure on about 19 days to New York.

(No cross-examination.)

5089 C. F. MICHAELS.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Michaels, what is your business?

A. Vice-president of the Langley & Michaels Company.

Q. And what is the business of the firm of Langley & Michaels?

A. Wholesale drugs.

Q. How long has that firm been in existence?

A. Since 1850; that is, not the corporation, of course, but its predecessors.

Q. How long have you been connected with it?

A. Since 1886.

Q. Into what territory do you distribute your drugs?

A. Western Nevada and California; very little outside of that.

Q. Do you ship any to Portland and Oregon points?

A. Very little of recent years.

Q. Did you formerly ship up there?

A. Formerly, yes.

Q. Where does your traffic originate? That is, where do you get your stock—from the east?

A. Principally on the Atlantic seaboard, but also considerable from the middle west.

Q. How has your business for a number of years chiefly moved from the Atlantic seaboard?

5090 A. The seaboard business, principally Sunset Route; by all-water route as well, but principally Sunset.

Q. Has that been so now for a long time?

A. Yes, sir.

Q. Was business solicited by that route years ago by the Southern Pacific people?

A. Yes.

Q. Have you ever shipped goods from Cincinnati?

A. Yes.

Q. Do you ship by New Orleans?

A. We have occasionally in the past, but as a rule not by New Orleans.

Q. It usually goes the northern route?

A. Yes.

Q. But you have shipped via New Orleans?

A. We have, yes.

Q. Have you shipped by the American-Hawaiian line?

A. We do, yes.

Q. Have you shipped by the Pacific Mail and Panama Route?

A. Practically we have not used the Pacific Mail for a good many years.

Q. Why?

A. Due to inferior service, irregular time, poor handling of the goods.

Q. Do you find the American-Hawaiian line a better steamship line?

A. Yes, sir, much better, both in time and quality of service.

Q. At the time you went into business, the Union Pacific had an agency here soliciting business, hadn't it?

A. Yes.

Q. The Santa Fe also?

A. Yes.

Q. You say years ago you used to ship to Portland somewhat?

A. Yes.

Q. How did that traffic move—boat or rail?

5091 A. Both: principally by boat.

Q. Principally by boat?

A. Yes.

Q. And sometimes by rail?

A. Yes. We used the rail considerably four or five years ago, we used the rail more than we did the boat because the service was better.

Q. Has that varied from time to time, sometimes the boat service better and sometimes the rail service better?

A. After the fire the railroad service was very inferior, and that is largely the reason we are not doing business up there now.

Q. Four or five years ago you say it was very good?

A. Yes, we could get goods into Portland then in about three to four days.

Q. By rail?

A. Yes. Last year it would take two weeks.

Q. Do you remember, years ago, how frequent the steamer service was?

A. In a general way I remember that the sailings of the O. R. & N. were from three to five days; latterly they have been five days.

Q. Has the transcontinental rate on drugs and medicines been increased lately?

A. The rate has been slightly increased lately; the carload rate was increased 10 cents per hundred pounds—the last raise, and a short time prior to that the less than carload rate was also raised 10 cents.

Q. What is your carload rate now?

A. At the present time $1.50.

Q. That was increased from $1.40?

A. It was $1.40 the first of the year.

Q. Does the bulk of the drugs and medicines that are con-
5092 sumed here on the coast come from the Atlantic seaboard, or from territory that takes the Atlantic seaboard rate?

A. Roughly speaking, I should say 70 per cent came from the Atlantic seaboard.

Q. Does the Atlantic seaboard rate apply as far west as Chicago?

A. It does, yes.

Q. And by the 70 per cent you mean originating east of Chicago or Atlantic seaboard proper?

A. Immediately on the Atlantic seaboard.

Q. What percentage originates in Chicago and east of Chicago?

A. What we would term the middle west, that is, Chicago, Cincinnati and St. Louis and points west of Buffalo, I should say about 30 per cent.

Q. You get some traffic from Detroit, don't you?

A. Yes, sir.

Q. Parke-Davis and big houses like that?

A. Yes.

Cross-examination by Mr. DUNNE:

Q. In shipping by the Pacific Mail, did you have loss and damage, breakage of goods, in the trans-shipment at the Isthmus?

A. Yes, more than there would be on railroad shipments.

Q. You found that an objection to the service?
A. We did, yes.

By Mr. SEVERANCE:

Q. You also found it longer, didn't you?
A. The time was considerably longer, yes.

5093 T. B. SETTLE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Settle, what is your business?
A. Traffic manager for E. Clemens Horst Company.
Q. What is their business?
A. Growing hops, hop business.
Q. Where do the hops that you ship, originate?
A. California, Oregon and British Columbia.
Q. Some of them in the Willamette Valley region?
A. Yes, sir.
Q. How long have you been with this company?
A. About two years.
Q. Previous to that what was your business?
A. Southern Pacific Company.
Q. In what capacity?
A. In the auditing department.
Q. When you were in the auditing department, were you familiar in a general way with the way traffic moved?
A. My position was as revising clerk and I was familiar to a certain extent.
Q. The hops that you buy in the Willamette Valley are shipped to what places?
A. Mostly to Europe.
Q. How do they move?
A. Via Union Pacific, Council Bluffs.
Q. Do you remember whether, years ago, hops used to move from that region by Shasta Route, Sacramento and Ogden?
A. Yes, sir.
Q. And also by the Union Pacific-Oregon Short Line?
5094 A. Yes, sir; moved by the Union Pacific; wouldn't move by the Short Line.
Q. How is that?
A. They would move via the Union Pacific, via Ogden.
Q. Do any hops move that way now?
A. No, sir.
Q. Any rates in that way?

A. No, sir.

Q. Do any of the hops that you get in the Willamette Valley region move to the seaboard by the Sunset Route?

A. No, sir.

Q. Have they at any time?

A. We have had cars move that way.

Q. Are hops a commodity that can be handled comfortably in boats?

A. Yes, sir.

Q. So the Sunset Route is a satisfactory kind of route for hops, is it,—boat and rail?

A. Yes, sir.

Q. Do you ship any hops to the city of Milwaukee, where, I believe, some hops are consumed?

A. Yes, sir, quite a few.

Q. And how do those hops move at the present time?

A. As a rule they go by the Union Pacific and C. M. & St. P.

Q. How do hops to St. Louis move from that region?

A. The majority of them go via Kansas City and the Wabash or the Missouri Pacific. We have had cars go via New Orleans and the Illinois Central.

Q. Do you ship hops to Cincinnati?

A. Yes, sir, we have a few cars going to Cincinnati.

Q. That is something of a brewing town, isn't it?

A. Yes, sir.

Q. How do hops move to Cincinnati?

5095 A. The last ones we shipped to Cincinnati went via New Orleans and the Illinois Central and the B. & O. S. W.

Q. Previous to the amalgamation of the Southern Pacific and Union Pacific traffic departments, do you know whether the hop business was solicited by the Southern Pacific via Sacramento from the Willamette Valley?

A. I couldn't say.

Q. You weren't in that business? You simply know that they moved that way?

A. Yes, sir. I know they moved that way.

Q. Whether they asked to have it move that way or not you don't know?

A. I couldn't say as to that.

Q. Does any of your freight from the Willamette Valley region move by the Denver & Rio Grande now from Ogden?

A. No, sir.

Q. Have you attempted to move any that way recently?

A. I don't think we had any from the Willamette Valley; only one car that I know of was from a station on the S. P.

Q. Whereabouts?

A. I think it was Mount Angel.

Q. Where is Mount Angel?

A. It is up there near Salem, I think: around that hop district.

Q. Salem is in the Willamette Valley?

A. It is in the Willamette Valley, yes, on the Southern Pacific.

Q. Did you endeavor to move that car from Mount Angel by the Denver & Rio Grande, or did you move it that way?

A. I think the brewery wanted it D. & R. G., but for some reason or other our routing instructions were ignored. I afterward
5096 found out that it was left off by the man who shipped the car.

Q. How did the car move?

A. It moved Union Pacific.

Q. Do the Union Pacific and Southern Pacific solicitors here call on you for business now?

A. Once in a while; very seldom.

Q. How do they solicit Atlantic seaboard business—by what route?

A. They never solicit any of our business. They call around once in a while to leave a claim voucher or something like that.

Q. They don't come to solicit business?

A. All the business goes S. P. or Union Pacific, so there is hardly any use.

Q. How does your business from British Columbia move—by Canadian Pacific?

A. By Canadian Pacific, yes, sir.

Cross-examination by Mr. LOVETT:

Q. Do you know how the route from the Willamette Valley by Portland and O. R. & N. and Short Line and thence over the Union Pacific, in the matter of distance and grades, compares with the route by the Southern Pacific, Sacramento and Ogden?

A. I have not been over the northern route, but I should think there are not nearly so many grades that way as via the Shasta Route and the Sierras.

Q. You understand it has the advantage both in grades and distance, don't you?

A. Yes, sir.

Q. And that is the way your business moves now from that territory?

A. Yes, sir.

5097 Q. Prior to 1901 that route was not open for shipments originating on the Southern Pacific in the Willamette Valley, was it?

A. I couldn't say.

Q. You were not in the business at that time?

A. No, sir. I was not in the business.

Q. You don't know, then, that shipments originating on the Southern Pacific in the Willamette Valley had to move east either by Ogden or the Sunset Route?

A. No. I couldn't say as to that.

Q. What did I understand your testimony to be as to shipments from that territory by the Sunset Route since 1901? Do you ship any that way now?

A. Very few shipments go Sunset.

Q. Why?

A. The time is not very good from Oregon.

Q. The all-rail routes are very much shorter both in time and distance, aren't they?

A. They are much quicker; I don't know about the distance; I should say they are shorter.

Q. For New York shipments they are a great deal shorter?

A. Yes, sir.

Q. And make much shorter time?

A. Yes, sir.

Q. You spoke of one shipment from that territory to Cincinnati?

A. Yes, sir.

Q. When was that made?

A. About three months ago.

Q. Why was that made?

A. Well, it was necessary to divert hops a good deal, and by sending it through New Orleans we have the privilege of diverting it on the Sunset at the through rate.

5098 Q. That is, on account of the market conditions, to divert it in transit?

A. Yes, sir.

Q. That was the reason it went there. If you shipped it via Ogden you would not have that privilege after it got beyond Ogden—I mean Council Bluffs, after it got beyond Council Bluffs, but could you any time this side of Council Bluffs divert it if it was shipped by way of Ogden?

A. Yes, sir.

5099 FRANK J. RUMPF,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Rumpf, what is your business?

A. Assistant manager sales department California Wine Association.

Q. How long have you been with that company?

A. Since August 6, 1889.

Q. And what, if anything, do you have to do with the routing of their traffic?

A. Have charge of the traffic.

Q. How long have you had charge of the traffic?

A. Since 1894.

Q. As a rule, who routes your traffic? Do you route it, or is it routed by the consignee?

A. At times routing orders are submitted by consignees; other times we control the routing.

Q. What is the tonnage, approximately, of your association?

A. Monthly or annually?

Q. Annually.

A. Annually would be guesswork on my part; monthly I believe the total number of cars aggregate 1,500.

Q. 1,500 cars a month?

A. 1,500, yes.

Q. And where does that traffic move?

A. East and west bound.

Q. What kind of traffic moves west bound?

A. Cooperage supplies, and so on; empty barrels occasionally.

Q. From what points in the east?

5100 A. The cooperage from in through Pennsylvania, that is, the cooperage iron from Pennsylvania; oak from the southern part of the United States—Gulf states.

Q. Where does the traffic originate east-bound?

A. Principally Winehaven.

Q. How far is that from here?

A. It is in Contra Costa County, on the bay shore of San Francisco.

Q. How does that cooperage stock move west?

A. West-bound, I am not in a position to state. Mr. Abbottson, superintendent of supplies, has charge of that end of the business.

Q. You don't know how it moves?

A. No, I do not.

Q. Do you happen to know whether it moves by ocean ships or rail?

A. I am not in a position to state; I don't keep tab of that.

Q. How do your goods to the east move?

A. We have always made it a practice to favor local agencies, which virtually covers all lines.

Q. All lines?

A. All lines.

Q. You mean you favor the local commercial agencies of the railroad?

A. We favor the local commercial agencies of the transcontinental lines.

Q. So, you have distributed your traffic?

A. As far as possible.

Q. And have done that in a way that you regard as equitable between the different lines?

A. At one time we kept a record to see that one line was not favored over another.

Q. Then, by all lines, shipping by all lines, do I under-

5101 stand you include the lines through Ogden and El Paso and the Santa Fe?

A. Ogden, El Paso, Mojave; occasionally by water to Seattle and Tacoma.

Q. And out over the northern lines?

A. Some years ago we shipped considerable over the northern lines; that is, by way of Vancouver, if I remember correctly, in connection with the Canadian Pacific.

Q. Was that the time they had a differential rate?

A. That is the time the Canadian Pacific quoted a differential of 10 per cent.

Q. To what points was the traffic destined that moved east that time, in that way?

A. At that time?

Q. Yes.

A. All points, St. Louis, Chicago, St. Paul, Milwaukee, Cincinnati.

Q. And the seaboard?

A. That I don't remember. I hardly believe that the Canadian Pacific quoted a 10 per cent differential to seaboard points.

Q. Are you sure about that?

A. I don't remember.

Q. Now, this traffic that moved, say, to Chicago under that routing, did it go to St. Paul by the Soo and then on to Chicago?

A. And down from Chicago.

Q. What roads, do you remember?

A. No, I don't; that is so many years ago that I have lost track of it.

Q. Do you ever ship east by the Panama route?

A. Occasionally.

Q. What kind of packages?

A. Principally barrels of 50 gallons each.

Q. Do you ship case goods by Panama?

5102 A. We have not had occasion to ship case goods by way of Panama for some months.

Q. Why was that? Any special reason?

A. Firstly, on account of the irregular schedule; secondly, scarcity of the space in the Pacific Mail boats; thirdly, the rough handling down at Panama and Ancon?

Q. Have you shipped case goods by the American-Hawaiian line, or only barreled goods?

A. We have shipped both barrels and cases by way of Tehuantepec.

Q. How did that go through?

A. In splendid condition.

Q. Do you ship wines to Montana points?

A. We do.

Q. By what routes have you shipped to Montana common points from San Francisco?

A. Montana consignees have generally made it a rule to send in the routing orders, occasionally favoring the all-rail, and again by way of Seattle or Tacoma. But very few carload shipments are left in our care, that is, so far as routing is concerned.

Q. You said boat and rail by Tacoma and Seattle. Did any move by Portland, O. R. & N. boats?

A. Very little has moved by way of Portland.
Q. How did the traffic that moved all-rail move, chiefly?
A. There was only one way—Oregon Short Line.
Q. Yes, there is more than one way.
A. Well, that is the main——
Q. You mean Southern Pacific to Ogden and then the Short Line?
A. Southern Pacific to Ogden and then the Short Line.
Q. None of it ever moved north all-rail, so far as you know?
A. The last car that we shipped north all-rail was the latter
5103 part of February or beginning of March.
Q. How did that move from Portland on?
A. Northern Pacific.
Q. That route has always been open to you, hasn't it?
A. That route has always been open to us.
Q. Has business been solicited by the Northern Pacific by that route?
A. We find that the Northern Pacific has secured most of the business in the northwest territory, including Montana common points.
Q. And how does that traffic move, as a rule, when it goes over the Northern Pacific? How does it reach the lines of the Northern Pacific?
A. By way of Tacoma.
Q. By boat?
A. By boat from the Pacific Coast.
Q. You say that in February or March you had a car which went by rail?
A. We had a car going up by rail, yes, on account of the number of washouts, etc. We had the intention of shipping it by way of the Pacific Coast, but the Northern Pacific at that time being blockaded, snow-bound, we had to make arrangements to let it go by rail from Winehaven.
Q. And it went Shasta Route to Portland?
A. And it went Shasta Route to Portland.
Q. And then by the Northern Pacific?
A. And then by the Northern Pacific.
Q. Do you ship to Portland proper, or have you for a good many years?
A. To Portland proper, yes.
Q. How does that traffic move?
A. As a rule, first steamboat out; it may be the San Fran-
5104 cisco & Portland Steamship Company, or it may be an independent boat.
Q. Do you ship case goods that way?
A. We do.
Q. Get satisfactory service?
A. We do.
Q. Do you ship any by rail to Portland?
A. We did some years ago.
Q. How many years ago?

A. Perhaps five or six years ago, only where consignee favored all-rail shipments.

Q. And I think you have already stated that the consignees in many instances take care of the routing themselves?

A. Take care of their own routing.

Q. You respect that request?

A. Invariably.

(No cross-examination.)

5105 CHARLES S. MOSES,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Moses, what is your business?

A. Wool.

Q. How long have you been in the wool business?

A. About thirty years.

Q. And where do you reside?

A. San Francisco.

Q. Where does the wool that you handle originate?

A. Mostly in California.

Q. Any of it in Nevada and Oregon?

A. Yes, some.

Q. Where is it shipped? To what point is it shipped?

A. Boston.

Q. Boston is the great wool market of the United States, isn't it.

A. Yes.

Q. And have you always shipped to Boston?

A. Yes, sir.

Q. How does your wool from Nevada move to Boston?

A. I think by the Sunset.

Q. How far east in Nevada?

A. I guess most of the way through Nevada. Some of the business may go the other way; I don't know.

Q. Is it your impression that the bulk of it goes Sunset from Nevada points?

A. I think so, yes, sir.

Q. That goes Sunset boat line to New York, and then how does it reach Boston—boat or rail?

A. By boat.

Q. Does any of that wool business in Nevada go east over the Union Pacific?

5106 A. Possibly some of mine may. I don't know whether it does or not, I am sure.

Q. You don't know of any?

A. I don't know but some of mine may go that way.

Q. I say are you aware of any going that way.
A. No, I couldn't say that any goes that way.
Q. Do you get wool in northern Utah?
A. No.

Mr. LOVETT. By your leading questions—of course I think you do it unintentionally, and I don't want to make an objection, but you have left a wrong impression, I think. The witness left it in a way that none of his wool went that way. What he meant was that he didn't know whether it did or not.

WITNESS. As a matter of fact I don't know whether any goes over the Union Pacific or not.

Mr. SEVERANCE. That is what I understood him to say.

WITNESS. I don't attend to the shipments, and possibly a great deal of it may go from Nevada that way; I can't say.

Q. But so far as you know of the movement of wool from Nevada points, it goes Sunset?

A. Well, really, I don't know anything more about it than whether it goes Southern Pacific. I am not posted on it. I don't attend to the shipping.

Q. Who does attend to your shipments?

A. Some of my folks in the office attend to them. I very seldom see a bill of lading, and I don't know whether it goes Union Pacific or whether the bulk of it goes Sunset.

Q. Well, a moment ago you said your impression was that it moved Sunset. From what did you get that impression, Mr. Moses?

5107 A. Well, that is the general impression that it does go Sunset, but still I may not be correct about it.

Q. You may be wrong about it?

A. I may be wrong about it.
Q. But that is your impression?
A. That is my impression, yes.
Q. Do you ship any wool to the east by boat from San Francisco?
A. Not for a great many years have I shipped any that way.
Q. How does your wool move that originates in Oregon, around Portland, shipped from Portland?

A. Moves by rail over the Short Line, Union Pacific, and other roads.

Q. Any of it go Sunset?
A. No, not now.
Q. Has it at any time?
A. 12 or 15 years ago we shipped some around that way.
Q. Does any of it move by Sacramento and Ogden at this time?

A. I couldn't tell you, I am sure. I am not represented in Oregon this year. I don't know which way they ship.

Q. I say does it move by Sacramento and Ogden from Portland?

A. I say I am not shipping from there this year; I am not represented there.

Q. Have you in the last few years shipped any by that road?
A. I couldn't tell you.

Q. Did you formerly ship that route?

A. No, I think it is—I really am in ignorance as to which way the wool goes from there. I haven't paid any attention to it for a dozen years.

Q. Take it a dozen years ago, how did it move?

A. I suppose the direct short line down to the Union Pacific. Other roads I can't tell you. It was shipped from there and sent to Boston, and that is all I know about it.

(No cross-examination.)

5108 THOMAS DENIGAN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Denigan, what is your business?

A. Wool business.

Q. Where does the wool that you handle originate?

A. Chiefly in California. I confine myself pretty much to California wool.

Q. And what parts of California?

A. Southern and central parts.

Q. Do you have sheep and shear the wool yourself, or do you buy the wool?

A. I am simply a dealer, a speculator.

Q. A dealer and speculator?

A. And buyer; yes, sir.

Q. And do you get any wool from Oregon?

A. No, I don't make any effort to get any wool from Oregon. Very seldom that I get wool from there.

Q. How long have you been in the wool business?

A. Oh, it has been so long I am afraid to tell you, you would think I was too old. About 40 years I guess, somewhere along there.

Q. Is Boston the destination of the wool that you buy?

A. Eventually it is; yes, sir, but I chiefly confine myself to buying and selling wool right here.

Q. You sell it locally?

A. Yes, sir.

Q. Do you know about the traffic movement of the wool, how it moves east, this wool that you handle?

A. The wool that I pack and ship myself sometimes?

5109 Q. Yes.

A. Yes; it generally goes by the Sunset.

Q. At what points do you compress the wool that you ship?

A. Almost invariably right here in San Francisco.

Q. Do you ever compress any wool in Los Angeles and ship it from there?

A. Very seldom that we do. The facilities down there are not good for packing.

Q. What is that?

A. I say the facilities down there for compressing and packing are not good, not satisfactory.

Q. Do you buy any wool in Idaho and Montana?

A. No, sir.

Q. Nor in Nevada?

A. Well, it is so seldom in Nevada that I might say no. I have bought within 18 hours perhaps 200,000 pounds, but it is very seldom that I get up there.

Q. What part of Nevada did that come from?

A. The initial point of shipping this particular wool that I speak of would be at Minden.

Q. Have you in years gone by dealt in Nevada wool?

A. Largely when it came to California, when it came this way. San Francisco is the market for it. I mean largely when San Francisco is the market for it.

Q. But you have not bought wool in Nevada and shipped it east from Nevada?

A. No, sir; as a rule I don't.

Q. How is the bulk of the wool shipped to the east—compressed or otherwise?

A. From the interior points of Nevada in sacks, just as it is sacked at the ranch. From Oregon, I understand, almost invariably in sacks, that is, the outer regions; all shipped in sacks from Shaniko and that country; Heppner and other points that receive wool
5110 largely ship it in sacks. There are points in Oregon where they pack, Portland for instance; they pack all their scoured wool and a great deal of the grease wool there, too.

Q. How far east on the line of the Southern Pacific have you in your experience known wool to be shipped to the east direct?

A. How far east on the Southern Pacific?

Q. Yes, coming back this way by the Sunset.

A. Let me see. I bought largely of wool in 1905; I think I shipped perhaps a million and a half pounds from the Lakeview region; that all went by the Sunset Route.

Q. How far is Lakeview from San Francisco?

A. It is perhaps 500 or 600 miles.

Q. Lakeview is on the Shasta Route, isn't it?

A. Yes. The shipping of that particular wool would have to go by the Shasta Route, I should think. No, by the way—I forgot—it comes from Reno—that narrow-gauge road that runs up to Alturas. In the Lakeview country I have had wool dumped at Agra and Montague and shipped from there, but it generally come here from that country in bales.

Q. On what line of road are those towns?

A. They are on the Shasta Route. The Lakeview wool that I spoke of has generally, for the last five years, found its way to Reno and has been shipped from Reno directly by the Southern Pacific.

Q. And that comes back this way, and Sunset?

A. I take it for granted that it does; of course I don't know.

Q. Have you ever shipped any wool from eastern Nevada
5111 or northern Utah?

A. No, sir, excepting what would come here. I mean to say I have never shipped to the east.

Q. Do you know of any shipments of wool made recently by the line of the Southern Pacific and Union Pacific to Boston, and its eastern connections?

A. I do not, no, sir.

Q. As far as you know it has all moved Sunset, as far as you ever had to do with it?

A. As far as the railroad shipments are concerned, yes.

(No cross-examination.)

5112 M. S. KOSHLAND.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Koshland, what is your business?

A. Wool dealer.

Q. How long have you been in the wool business?

A. 38 years.

Q. Where do you ship your wool?

A. Mostly to Boston.

Q. And where does it originate?

A. I will say all over the United States, for that matter. I am really only a branch house here.

Q. What part of the business is particularly under the jurisdiction of this house here?

A. Nevada and California and Oregon.

Q. What is the name of your company?

A. In San Francisco, S. Koshland & Company.

Q. Taking up first the wool originating in Nevada, how far east do you buy wool in Nevada—clear across the state?

A. Clear across the state, yes, sir.

Q. And do you purchase any over in northern Utah beyond Nevada?

A. That is handled by the eastern house.

Q. Not by you?

A. No.

Q. Where is the house that handles that?

A. Boston.

Q. How does the wool that you buy in Nevada move to Boston, by what route?

A. Mostly over the Sunset.

Q. Does any of it go the other way?

5113 A. Not in the last few years.

Q. Did it at any time?

A. Yes, sir.

Q. How long ago?

A. Oh, I suppose about four or five years ago.

Q. That wool, then, from Nevada is brought west to Sacramento and sent down over the Sunset Route, around to Boston?

A. As we under-stand it, yes.

Q. In what parts of Idaho do you buy wool?

A. All over the state.

Q. In the southern part?

A. Yes: that is handled by our eastern house again.

Q. What is that?

A. That is handled by the Boston house.

Q. You said that you handle Oregon wool too.

A. Yes, sir.

Q. In what part of Oregon does that originate?

A. All over the state.

Q. How does wool originating in the Willamette Valley move to the east?

A. That is shipped either over the Northern Pacific or the Union Pacific, Short Line.

Q. Does any of that come south by the Shasta Route now?

A. No.

Q. Did it formerly?

A. Formerly we did ship out of Portland; some over the southern route by Galveston.

Q. And also at the same time shipping by the other routes?

A. Yes, sir.

Q. How long ago was that?

A. That was a matter of about 13 or 14 years ago.

Q. Have you ever shipped wool by the Panama route?

5114 A. Yes, sir.

Q. How long ago?

A. Two months ago.

Q. And how extensive are your shipments that way?

A. Not very; simply a matter of getting cheap stowage.

Q. Then, the longer they are on the road, the better?

A. At that time, yes, sir.

Q. That is the reason you give them the business—because they take so long to transport the goods?

A. Yes, sir.

Q. How does the wool move to Boston from New York when it is shipped Panama?

A. It is taken over by two routes—some by rail and some by the Metropolitan Steamship line, I believe.

Q. The Metropolitan Steamship line is the one that runs in connection with the Sunset, ordinarily, is it?

A. Yes, sir.

Q. How is your wool mostly shipped—in sacks or pressed?

A. The wool from California is always in compressed bales.

Q. How from Oregon?

A. That is also pressed, from the through rate points.

Q. Where is it compressed—at Portland?

A. At Portland, Pendleton, Shaniko, Arlington, and Heppner.

Q. From whom do you buy wool—from the wool growers?

A. From the wool growers, yes, sir, and other dealers.

Q. Do any of the wool growers, so far as you know, ship their own wool to Boston, or do they all dispose of it in the west?

A. The majority of them dispose of it. There are exceptions. It all depends on the market.

5115 Cross-examination by Mr. LOVETT:

Q. Much the greater part of the Oregon wool originates east of Portland, doesn't it?

A. Yes, sir.

Q. On the O. R. & N. line east of Portland?

A. Yes, sir, all except the Willamette Valley wool.

Q. That is a comparatively small portion of the Oregon wool?

A. Yes, very small.

Q. You said that some 13 years or more ago you used to ship a great deal of wool from the Willamette Valley via the Sunset Route.

A. Yes, sir.

Q. But you have not shipped much that way in recent years?

A. No, sir.

Q. Why?

A. Well, at that time we were friendly disposed to the Sunset and they made a point of asking for freight out that way, hauling it out. I don't know what the connecting lines were. Very often our travelers who attend to the shipping have friends who solicit for these lines, and they ask for the freight and succeed in getting them to route it that way.

Q. The rates and route are still open by the Sunset; you can ship it that way if you want to?

A. I suppose so.

Q. You say you suppose so. You have never been refused?

A. I have never been approached for freight that way in recent years.

Q. The other is much the shorter way?

A. Yes, the Northern Pacific or Union Pacific out of Oregon points.

Q. With reference to this Nevada wool that I believe you
5116 testified moves now chiefly by the Sunset. You say that some four or five years ago it moved the other way, that is, through Ogden?

A. Yes, sir.

Q. Rates have been in both ways, haven't they, and are in still both ways? You can move that either the all-rail route from Ogden ——

A. There is a rate in to-day—I happened to be down to Los Angeles the other day and found out that the Salt Lake road has taken wool to be packed in transit at Los Angeles, and that is being done very largely now from Utah points, emanating ten miles from Salt Lake, I believe.

Q. That is, the San Pedro line?

A. Yes, sir.

Q. But I was speaking of the Southern Pacific and the Union Pacific. Perhaps I misunderstood you, but I assumed that the Nevada wool about which you testified was that which originated on the line of the Southern Pacific.

A. Originated all on the line of the Southern Pacific.

Q. And that, you say, mostly all moves to Boston now by way of the Sunset?

A. Yes, sir.

Q. My question was whether the rates are not equal both ways; that is, you can move it either by way of the Sunset or by Ogden and the Union Pacific?

A. I have not inquired into it lately. The men who attend to the shipping are supposed to know what is most to their advantage.

Q. The last information you had on the subject was that rates were in both ways, wasn't it?

A. I never knew it any different.

Q. Four or five years ago you shipped the other way?

A. Yes, sir.

5117 Q. That is, by way of Ogden and the Union Pacific?

A. Yes, sir.

Q. Wool originating at local points on the Southern Pacific was then moved eastwardly through Ogden?

A. Yes, sir.

Q. And more recently you have been shipping by the Sunset?

A. Yes, sir.

Q. But joint rates were in formerly when you shipped by way of Ogden, weren't they?

A. I think they were.

Q. You don't know of those rates being taken out?

A. Sometimes we have occasion to change our routing, and we can do it here, through the Southern Pacific office, while it is in transit.

Q. That is true as to the Sunset; would it also be true if it moved the other way, over the Union Pacific?

A. I suppose so.

Q. So long as it was on the Union Pacific?

A. Yes, sir.

By Mr. DUNNE:

Q. Do you move any wool from the Willamette Valley by the Sunset Route, east, now?

A. No, sir.

Q. All your wool goes by way of Portland?

A. Portland, either Northern Pacific or the Short Line.
Q. Why do you send it that way?
A. We have an agent up there who does his own routing.
Q. Your agent?
A. Our agent, yes, sir.
Q. Does your agent do the routing?
A. Yes, sir.
Q. And it is on the routing of your agent that that freight passes by way of Portland?
A. Yes, sir.
Q. Or the Northern Pacific?
5118 A. It has to be packed in pressed bales; it has to be taken to Portland for the presses.
Q. But it goes by the northern route?
A. It goes by the northern route.
Q. Northern direction?
A. Yes, sir.
Q. The bulk of the wool output of Oregon is not raised in the Willamette Valley, is it?
A. No; very little of that comes to Portland at all.
Q. It is east of Portland?
A. East of Portland entirely.
Q. How does that move east?
A. From Pendleton and around there, by either route—Northern Pacific or Union Pacific; and at the Union Pacific points, O. R. & N., etc., I guess the bulk of it goes out on the O. R. & N.
Q. Did you move any of that wool east 13 or 14 years ago?
A. Yes, sir.
Q. By what route?
A. The same way—Northern Pacific and Union Pacific.
Q. Then, the most of your Oregon business, the substantial bulk of your Oregon business, was developed in eastern Oregon and moved by the northern routes, east, 13 or 14 years ago?
A. Yes, sir.
Q. Do those same conditions obtain now?
A. Yes, sir.
Q. Have they obtained during all of this interval?
A. Yes.

5119 JULIUS WOLFF,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Wolff, what is your business?
A. Canned goods and dried fruit.
Q. How long have you been in that business?
A. About twenty years.

Q. Whereabouts?

A. San Francisco.

Q. Where do you market your goods?

A. All over the world.

Q. Well, get down to the United States first. Do you market them in all parts of the United States?

A. Market them all over the world, sir—Europe.

Q. I am going to examine you about your foreign shipments later, but I want to ask you about the United States first.

A. In the United States, yes.

Q. From what points do you ship chiefly?

A. From Napa County and Santa Clara County principally.

Q. In shipments to the Atlantic seaboard territory, previous to the time that the Southern Pacific and Union Pacific came under one management, which way did the Southern Pacific endeavor to route the traffic?

A. Sunset, if possible.

Q. And did the Union Pacific solicit your business too?

A. Yes, sir.

Q. To that same territory?

A. Yes, sir.

5120 Q. Do your goods move by water? I assume they do when they are going to Europe, but I mean from here to the Atlantic seaboard.

A. Not as a rule.

Q. Usually rail or Sunset?

A. Mostly rail.

Q. When you ship to Europe how does your traffic move—by New York?

A. Yes, sir, as a rule.

Q. And how does it move from here to New York?

A. Rail.

Q. You include the Sunset Route when you say rail, don't you?

A. Well, whichever way we choose to——

Q. I say when you say moving by rail, you include the Sunset Route as a rail route?

A. Yes.

Q. It is part water, you know.

A. Yes, sir.

Q. But when you speak of a rail route, you include the Sunset as well as the other line?

A. Yes, sir.

Q. Have you shipped any goods at any time by the Panama route?

A. Yes, sir.

Q. How recently?

A. Not for five or six years at least.

Q. Why not?

A. Didn't like the service.

Q. Have you shipped by the American-Hawaiian line?

A. Yes, sir.

Q. How is that service?

A. A trifle better.

Q. But not as good as the all-rail service?

A. Not in my opinion.

Q. Is the matter of time important to you in getting shipments through?

A. Yes, it is a factor.

Q. And the American-Hawaiian line is how much longer than the all-rail lines—10 days or 15 days?

5121 A. That depends altogether on the conditions.

Q. What is the time that the Panama route takes?

A. To New York about 30 days, sometimes 40.

Q. Do you route any business to the east by way of the D. & R. G. from Ogden?

A. We have done so, considerable.

Q. Have you recently?

A. Yes.

Q. How does the proportion of business which you give the D. & R. G. now compare with what you formerly gave them?

A. Well, it is very small. I couldn't give you the figures.

Q. What is the reason for the change?

A. Well, possibly a matter of preference, possibly a matter of convenience.

Q. What do you mean by convenience, Mr. Wolff?

A. Well, can't always get cars that are suitable to go that way, at cannery points, without delay.

Q. Did you have better luck years ago getting cars to load that way than you have now?

A. I think so, yes, sir.

Q. Do you ship to Montana points?

A. Yes, sir.

Q. What kind of goods?

A. Canned fruit, canned salmon.

Q. From San Francisco?

A. Originating in the Napa Valley or Santa Clara Valley.

Q. San Francisco common points, California common points?

A. Yes, sir.

Q. How does that business move now?

A. Now it would move via Ogden.

Q. Do you remember, years ago, before the Southern Pacific and Union Pacific came under one management, whether efforts were made by different lines to secure that business?

A. The buyers used to favor shipments via Portland over
5122 the Northern Pacific and the O. R. & N., but we always favored shipping them by way of Ogden.

Q. What was the advantage to you in shipping by way of Ogden?

A. No transfer of the goods; went right through in the original car.

Q. They moved to Ogden and up over the Short Line?
A. Yes, sir.
Q. Did any of the business in those days move by Portland?
A. Yes, sir. Sometimes we were compelled to ship that way because the buyers insisted on it.
Q. Do you know the reasons that actuated them?
A. No, sir, I couldn't answer that.
Q. The rates were the same both ways, weren't they?
A. Presumably they were.

Cross-examination by Mr. LOVETT:

Q. When you were asked on your direct-examination which way the Southern Pacific sought to send business to the east prior to 1901, you said by the Sunset when possible. Now, when it was not possible to send it that way, which way did they seek to send it?
A. What was that, sir, the last part of the question?
Q. On your direct-examination you were asked which way, prior to 1901, the Southern Pacific sought to route business for the east, and you said via the Sunset when possible. Now my question is, in those cases where it was not possible for the Southern Pacific
5123 to get it by the Sunset, which way did they seek to send it?
A. We would ship it via Ogden.
Q. That is, if they could not get it by the Sunset, then they sought to get it by Ogden, didn't they?
A. Yes, sir.

5124 ABRAHAM ROSENBERG,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Rosenberg, where do you live?
A. Berkeley.
Q. What is your business?
A. Shipper of dried fruits.
Q. How long have you been in that business?
A. About 16 years.
Q. Is your place of business in San Francisco?
A. Yes, our principal place of business is here.
Q. Where do the dried fruits that you ship, originate?
A. Throughout the state; different parts of the state.
Q. Do you assemble them here or do you ship direct from the point where they are packed?
A. We assemble at various places in the state, and at times ship direct from the point where they are grown, without assembling.
Q. Previous to the time that the Southern Pacific and Union Pacific came under one traffic management, do you remember any solicitation of business for these two companies?

A. Yes, sir.

Q. Do you recall that?

A. Yes, sir.

Q. How did the Southern Pacific solicit your business to the Atlantic seaboard from California?

A. Sunset.

Q. And did the Union Pacific at the same time solicit by their route?

A. Yes, sir.

Q. Was that competition between these roads active or
5125 otherwise?

A. Active; not so much on seaboard business as intermediate territory.

Q. What territory?

A. Chicago, Indiana, Ohio.

Q. Where is the price of dried fruits fixed—in the east or out here?

A. We try to fix it here. We are not always successful.

Q. Is there an eastern market that governs in that matter? Do you come in competition in the east with any other region?

A. On certain varieties of stuff which we ship, yes.

Q. What kinds?

A. Figs, nuts, chiefly.

Q. Raisins?

A. Infrequently.

Q. Almonds? Those are nuts.

A. Yes.

Q. What kind of nuts do you ship?

A. Almonds and walnuts, both.

Q. With what other regions do you come in competition in the eastern market, as to coast products?

A. On figs with Smyrna; on nuts, with Spain and France.

Q. Have you had a raise in freight rates recently?

A. Yes, sir.

Q. What was the extent of that increase as to these products that you ship?

A. 10 cents per 100.

Q. Now, as to these products in which you are in competition with Europe, who has to stand that increase?

A. I am not able to answer.

Q. I mean does it add to the price in the east or does it lower the price that is paid for them in the west?

A. There are so many factors entering into that, that I am not competent to say who bears the burden.

5126 Q. Do you know whether the steamship rates were advanced at the same time from Europe?

A. I think not.

Q. On the products that enter into competition with you.

A. I think not. I am not informed, however.

Cross-examination by Mr. DUNNE:

Q. In reference to the so-called competition for the interior business, interior as distinguished from the seaboard—you made that distinction, I noticed, in your testimony.

A. Yes.

Q. As to this so-called competition, you had in mind the Southern Pacific line by the south, and the line of which the Union Pacific is part by the north; is that the situation you had in mind?

A. Yes, sir.

Q. The Southern Pacific is a member of both competing propositions, if it be competition, is it not?

A. Yes.

Q. The price at which the Union Pacific offers to sell transportation from San Francisco to this interior territory is a price in which the Southern Pacific must concur, is it not?

A. Yes.

By Mr. SEVERANCE:

Q. The rates were equal by the two routes, were they not?

A. Since 1886, yes.

Q. The rates were equal?

A. Yes.

Q. And if the Southern Pacific secured the business, and sent it by their route via New Orleans, as you say, the way they solicited
5127 it, the Union Pacific got none of the revenue, did they?

A. No, sir.

Q. So, it was somewhat important to the Union Pacific to get it by the other route, even though part of the rate had to go to the Southern Pacific, if they wanted any earnings?

A. By their line, yes.

By Mr. LOVETT:

Q. You are not interested in the division of the rate between the different carriers, are you?

A. No, sir.

Q. All you are interested in is the aggregate rate, isn't it?

A. That is all.

Q. You are not concerned whether the Union Pacific or the Southern Pacific gets a share of it, or what share, are you?

A. No, sir.

By Mr. SEVERANCE:

Q. If all the railroads in the United States were under one management and rates were equal, it wouldn't make any difference to you who the stockholders were? That is the significance of Judge Lovett's question.

(No answer.)

Mr. LOVETT. No, that is not the significance of it at all. I think Mr. Rosenberg sees the points.

5128 H. R. LIPMAN.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Lipman, what is your business?

A. In the dried fruit business.

Q. Are you connected in business with Mr. Rosenberg, who was just on the stand?

A. I am, sir.

Q. How long have you been connected with that company?

A. About 12 years.

Q. What is the name of his firm? I forgot to ask him.

A. Rosenberg Bros. & Company.

Q. Do you have at the present time charge of the movement of their traffic?

A. Yes, sir.

Q. How do you send your traffic to the east, as a rule, now?

A. We have no special routing. We try and aim to give the different roads a chance at the business; divide it up, so to speak.

Q. And have you shipped some by sea?

A. We do, quite largely.

Q. By what route?

A. American-Hawaiian, Tehuantepec line.

Q. How long do they take to get your traffic through to New York?

A. It varies somewhat: say 25 to 35 or 36 days; an average, I suppose, of 30 days.

Q. What is the ordinary time consumed in shipments all-rail?

A. 18 to 20 days this past year.

Q. Do you ship somewhat by the Pacific Mail Panama route?

5129 A. Very little—practically none.

Q. What is the reason?

A. The service is not very satisfactory and the goods don't carry as well.

Q. Where is your plant, your warehouse, here at San Francisco?

A. On the corner of Branan and Japan Streets.

Q. What tracks is that on?

A. Southern Pacific spur.

Q. Do you ship any by the D. & R. G. from Ogden?

A. Yes, sir.

Q. What kind of luck do you have in getting cars to ship by the D. & R. G.?

A. We have had very little. I might say no trouble this past year; prior to that I think it was rather difficult at times to get equipment for that routing.

Q. But in the last year you haven't had any trouble?

A. I don't recall any instance where we have had any trouble—that could be called any trouble.

Q. For how long had the difficulty continued that you had up to a year ago?

A. I couldn't say as to that, just in a general way. I have had charge of this particular branch for four years now, and probably the three years previous to this year we had more or less trouble—nothing of any special note, however.

Q. Can you route traffic over the D. & R. G. in Southern Pacific cars?

A. Yes, I think we have no trouble doing that. In case we have any difficulty getting a D. & R. G. car, we have usually been able to get a S. P. system car for that purpose, that is, after taking it up with the assistant general freight agent.

Q. Who is the assistant general freight agent?

5130 A. Either Mr. Jones or Mr. Stubbs.

Q. And do you have to take it up with them?

A. I don't know as it is necessary to do so, but I usually have, and they have usually given the necessary authority, if such authority were necessary, to use such car.

Q. They have usually done so. Have they always done so?

A. Yes, sir, as far as I know they have always done so.

Q. But, in the first instance, you try to get a D. & R. G. car?

A. Yes, sir, always.

Q. Now, in shipping by the Union Pacific, it is not necessary to get a Union Pacific car?

A. No, sir.

Q. And you haven't had to take up with any official the matter of getting a Southern Pacific car to ship over the Union Pacific?

A. No, sir.

Q. Now, you say that you have divided your business among the different lines, as I understand you.

A. Yes, sir.

Q. Do you send any business north—to Portland?

A. As the destination, you mean?

Q. No, Montana.

A. Yes, sir; we do some business in the northwest—Montana and Washington and Oregon.

Q. How does your business move to Montana points?

A. That varies; sometimes by the Pacific Coast Steamship Company, care of the Northern Pacific or Great Northern at Seattle. I don't think we have shipped any of late years via Portland to Montana, and via Ogden care of the O. S. L.

Mr. LOVETT. That answer is not quite clear to me. You say you have not shipped any in recent years by Portland.

WITNESS. By Portland to Montana.

5131 Q. Is your business solicited now by different lines for Montana points?

A. Yes, sir. Not specially for Montana points; just the same as other points.

Q. I was speaking about this Montana business.

A. I couldn't say it is specially solicited.

Q. Does anybody come in looking for that on behalf of the O. R. & N. Company?

A. I don't recall that they have.

Q. The reason I ask you is because it appears that some years ago they were very active in working that business. Do they come to see you now, as far as you know?

A. I don't recall that they have, especially.

5132 A. E. FISK,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Fisk, what is your business?

A. I am with the C. A. Smith Lumber Company, as purchasing agent.

Q. Where is the C. A. Smith Lumber Company located?

A. Their main office is in Minneapolis.

Q. But on the coast here?

A. They have their sawmills and offices at Marshfield, Oregon; a planing mill and distributing yard at Bay Point.

Q. Bay Point here?

A. Yes, sir.

Q. On the Bay of San Francisco?

A. Yes, sir.

Q. Marshfield, Oregon, is on what arm of the sea?

A. It is on Coos Bay.

Q. How large a mill has the C. A. Smith Company up there? What is their capacity?

A. They are cutting between 250,000 and 300,000 feet a day. I don't know the exact amount.

Q. It is one of the most modern, up-to-date, best equipped sawmills of the country, even if you are connected with the company?

A. That, I believe, is the reputation it has.

Q. You will admit that, perhaps. What is the nature of the timber that is tributary to that mill on Coos Bay?

A. Fir, spruce, white cedar, some red cedar.

Q. Is there a large or a small body of timber tributary to Coos Bay?

A. Very large.

Q. It is one of the largest bodies of timber anywhere in 5133 the west, isn't it?

3123

A. I have heard that it is. I am not able to testify positively whether that is the fact or not.

Q. What means of transportation have they for lumber from Coos Bay? How do you get your lumber out?

A. By steamers, sailing vessels.

Q. You have a boat of your own, haven't you?

A. Yes, sir.

Q. What is the name of her?

A. "Nan Smith."

Q. And how long has she been on the route?

A. About 14 months.

Q. Previous to that how did you ship your lumber?

A. What little they manufactured in the old mill they shipped on chartered vessels, chartered steam schooners.

Q. The Southern Pacific have a boat running between here and Coos Bay, haven't they?

A. I believe it is under their management.

Q. The "Czarina"?

A. Yes, sir.

Q. Is she equipped to carry lumber?

A. Well, I have seen a few cargoes that she has taken, but she carries mostly coal.

Q. That is southbound?

A. Yes, sir.

Q. And she is not a passenger ship, is she?

A. No.

Q. Do you know the other boat that the Southern Pacific bought from Mr. Spreckels?

A. The steamer "Breakwater"?

Q. The "Breakwater," yes.

A. Yes.

Q. Is she equipped to carry lumber?

A. I wouldn't call her a lumber-carrying vessel.

Q. Has she carried lumber?

5134 A. Oh, I think that she has taken little lots; not a regular cargo of lumber, but small lots.

Q. Mostly lumber is carried on the deck isn't it?

A. Yes, sir.

Q. You have no rail connections with Coos Bay?

A. There is a small railroad in there.

Q. Just a finger sticking out into the country and stopping?

A. Yes, sir.

Q. There is no rail connection between Marshfield and the outer world?

A. None whatever.

Q. Where is your product sold which you bring down here by boat?

A. In the state of California, some of it going to the state of Nevada.

Q. Does some of it move clear through to the east?

A. I think there have been one or two shipments made into Wyoming, but I wouldn't be positive as to that.

Q. Isn't there a peculiar lumber that is cut up there at Coos Bay, a cedar that is somewhat novel, and is used in certain classes of work in the east?

A. Yes, there is a cedar called white cedar that grows there.

Q. What is that used for?

A. I don't know exactly. Some of it has been used for interior finish; they make some doors and windows up there out of it.

Q. Is that peculiar kind of cedar grown in other places?

A. I believe not.

Q. Does it exist, as you understand, in large quantities there?

A. No, there isn't a very large quantity of it.

Q. Rather a rare wood?

A. Rare wood.

5135 Q. And shipments to the east or to Nevada or to Wyoming points, and what not, what rate do you pay—the regular rate out of San Francisco, or do you get a division of the through rate from Coos Bay allowed you?

A. That I am not familiar with and could not answer, it not being in my work with the company.

Q. That is out of your line?

A. Yes.

Q. Are there other sawmills on Coos Bay aside from the C. A. Smith mill?

A. Yes, sir.

Q. Who conducts them?

A. The Simpson Lumber Company; and then there is the North Bend sawmill. Those are the only ones that are running there at the present time.

Q. Is this Simpson company a large concern?

A. Yes, quite a large concern.

Q. Where do they ship their product?

A. They bring a great deal of it to the California coast ports; I believe some of it goes foreign, that is, to Australia or South America.

Q. Do you happen to know the relative capacity of the Simpson mills as compared with yours?

A. They have made some changes recently in one of the Simpson mills. I don't know how much they are cutting. There is one other that cuts between 50 and 60 thousand; I think the other will cut about 100 thousand.

Q. What is the capacity of this third mill you mentioned?

A. About 50,000.

Q. Do you bring any shingles down from that region?

A. A few; we have brought some shingles from there.

Q. And they are sold, I suppose, in about the same territory as your lumber?

A. Yes.

(No cross-examination.)

5136 J. G. MELVIN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Melvin, where do you live?
A. San Francisco.
Q. What is your business?
A. At present traffic manager of the California Fruit Canners Association.
Q. How long have you been with the Fruit Canners Association?
A. Since June, 1906.
Q. And in what department of that association?
A. In the traffic department.
Q. Have you now charge of the traffic department?
A. I have, yes, sir.
Q. Since when?
A. Since November 1, 1908.
Q. Previous to your employment with the California Fruit Canners Association, what was your business?
A. I was with the Southern Pacific Company in both the traffic and operating departments since 1901.
Q. What is the California Fruit Canners Association?
A. They are manufacturers of canned goods and dried fruit.
Q. How many canneries are there in the association?
A. I should say about 22 or 23.
Q. Where are they located?
A. In different parts of the state of California.
Q. And are they in southern or northern California, or both?
A. In both—northern and southern and central.
Q. What kind of fruits do you put up?
5137 A. All kinds of green fruits.
Q. Will you name them?
A. Peaches, apricots, plums, cherries, all kinds of berries, asparagus—which is a vegetable.
Q. That is a fruit we all like, but I didn't know you put it up.
A. Oh, all other kinds of fruit; I don't recall them just now.
Q. Do you also dry fruit?
A. Yes, sir.
Q. What kind of fruits do you dry for the market?
A. Peaches, apricots, plums, pears.
Q. Apples?
A. Yes, apples. I think that is about all. Nectarines.
Q. To what parts of the country do you ship your product?
A. We ship to all parts of the United States.
Q. Do you ship to Europe?
A. And practically all over the world, yes, sir.

Q. How does your traffic to the eastern part of the United States move?

A. It moves through the Ogden gateway, by the Santa Fe, by the El Paso gateway, by Sunset-Gulf, by American-Hawaiian, and Pacific Mail.

Q. Moves Sunset all-rail also?

A. Yes, I have known some instances where it has moved Sunset all-rail.

Q. You say that you do ship some by Panama?

A. Yes, some; not to a very great extent.

Q. How do your shipments by the Panama route compare with those by the American Hawaiian line?

A. They don't compare very favorably, for the reason it takes longer in transit by the Pacific Mail; and another reason is that our goods have to be corner-strapped shipping by the Pacific Mail
5138 in order to get a clean bill of lading, which puts us to an extra expense, not being compelled to do it by the Sunset-Gulf or American-Hawaiian.

Q. I want to ask you about that corner-strapping. I forgot about that. I was going to ask another witness about it. What does that mean?

A. That is to wire-strap or iron-strap each corner of the case, to prevent the tops or the sides from breaking open.

Q. It is to strengthen the cases?

A. It is to strengthen the cases materially, yes.

Q. And that is required by the Pacific Mail, is it?

A. Yes.

Q. And it is not required by the American-Hawaiian line or the Sunset-Gulf line?

A. No, sir, in neither case.

Q. Do you ship goods to Montana points?

A. We do, yes, sir.

Q. Butte, that is, out through there?

A. We ship canned goods and dried fruit.

Q. How does that traffic move?

A. It moves both by Portland gateway and by Ogden gateway.

Q. When it moves by the Portland gateway, how does it move?

A. It moves over the O. R. & N., the Short Line, and also over the Northern Pacific.

Q. Does any of it move by rail to Portland and thence on by rail?

A. It does.

Q. In connection with what road?

A. The O. R. & N. and the Northern Pacific.

Q. Does any of that traffic move by Ogden?

Mr. LOVETT. I don't think the witness understood that
5139 last question. You asked him if any of it moved through the Portland gateway by rail, and he said yes; and you asked him what railroad, and he said the O. R. & N. and the Northern Pacific.

Q. So we will be sure we understand you, you mean when it moves it moves all-rail by the Shasta Route to Portland and then by the O. R. & N. to Wallula Junction, and then by the Northern Pacific to Montana?

A. Yes, or the Northern Pacific at Portland.

Q. Does it also move to Montana points by Ogden? I think you said it did.

A. Yes, we have made shipments that way.

Q. Does the Northern Pacific and the Union Pacific organizations solicit your business?

A. They do, yes, sir.

Q. And which route does the Union Pacific work for?

A. They work for the Ogden Route in connection with the O. S. L., and they work for the Portland route in connection with the O. R. & N.

Q. And the Northern Pacific works for the business from what point?

A. They work for the business by the Shasta Route and also by the Pacific Coast Steamship Company at Tacoma.

Q. How does the bulk of your Atlantic seaboard business move—boat or rail?

A. At the present time it moves by boat.

Q. By the American-Hawaiian?

A. Yes, sir.

Q. How does the bulk of that which goes by rail, move?

A. It is about a standoff between all-rail and Sunset-Gulf.

Q. That is to say, the largest percentage goes by the American-Hawaiian line; of the balance, about half by the Sunset-Gulf
5140 and the other half all-rail. Is that what I understand you to mean?

A. Yes, that would be a good comparison of it.

Q. I was trying simply to sum up what you had said. That is what you meant, is it?

A. Yes. Well, there is some by Pacific Mail of course, when we can get it on the Pacific Mail boats.

Q. You say very little goes that way?

A. I say when we can get it on the Pacific Mail boats, we ship that way sometimes.

Q. I thought you said they had some requirements which you didn't like, about the boxes.

A. Well, they do, but we are sometimes requested to ship by the Pacific Mail.

Q. Now let me ask you about that. Who routes your shipments? Do you do it, or is it done by the consignees in the east?

A. We generally control the routing; we respect the consignee's routings.

Q. When the consignee requests a routing you respect it?

A. Yes.

Q. You have only been with the company a couple of years; only had charge of their routing since last fall?

A. Yes, sir, that is all.

(No cross-examination.)

5141 J. O. BRACKEN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Bracken, what is your business?

A. Traffic agent.

Q. Have you ever been in the railroad service?

A. Yes, sir.

Q. Whereabouts?

A. Chicago and San Francisco.

Q. For how many years?

A. Something like 15 years in Chicago, and three or four years in San Francisco.

Q. What was your position in Chicago?

A. I was in the freight department all of the time I was in the railroad business in Chicago, and in different portions of the freight department.

Q. Which corporation?

A. The Chicago, Burlington & Quincy.

Q. When did you come out to San Francisco?

A. The last time, in 1900.

Q. Previous to 1901, what was the action of the Southern Pacific organization in working eastern shipments from here? What route did they endeavor to send their traffic over?

A. I don't know.

Q. Do you know about the traffic moving west?

A. I know nothing at all about the movement at the period you speak of.

Q. When did you know about the movement of business over the Sunset Route?

5142 A. Not until after I went into the employ of the Southern Pacific Company.

Q. That was when?

A. I think 1904.

Q. Oh, yes; that is recent. I misunderstood. I thought you were with them before that.

A. No.

Q. What were you doing here in California, after you came out in 1900, until you went into their employ?

A. I was just on a pleasure trip.

Q. At the time you were with the Burlington at Chicago, were you interested in transcontinental traffic?

A. At the time I was in the railroad business in Chicago with the Burlington, transcontinental traffic was such a small feature with the Chicago lines that no consideration was given to it.

Q. So you didn't pay any attention to that?

A. None at all.

Q. In what capacity were you employed by the Southern Pacific here?

A. I was in the claim department, the early part of my connection with them, and subsequently had charge of their tariff department.

Q. Did you have anything to do with the matter of soliciting business?

A. Nothing at all.

Q. Did you have any knowledge of the way business was routed?

A. Not of a personal nature, no.

Q. Then, all that you know about the railroad business is simply what you gather from other people?

A. That is all.

5143 Q. I was misinformed as to the date that you were in the railroad service here. I thought it was from the time you came out in 1900.

A. I didn't imagine that any testimony I could give would be of any interest to either side.

Q. That was my understanding, that you went into the service here in 1900 instead of 1903. I will excuse you, then, Mr. Bracken.

A. Thank you.

(No cross-examination.)

5144 W. S. RAY,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Ray, what is your business?

A. Stove business.

Q. Whereabouts?

A. San Francisco.

Q. And what is the name of your firm?

A. Ray Manufacturing Company.

Q. How long have you been in that business here?

A. Since 1872.

Q. Wholesale or retail?

A. Both.

Q. Where do you buy the stoves and ranges that you deal in?

A. I make quite a number and we buy the balance in Massachusetts.

Q. How do they move here from Massachusetts?

A. They are moving now by U. P. and C. P., but I have been moving by Sunset.

Q. Have you moved by steamer?

A. Some, yes, sir; that is, American-Hawaiian.

Q. Have you ever used the Pacific Mail?

A. Not for stoves, no, sir; have for other goods.

Q. Have you sent stoves by the American-Hawaiian line?

A. We sent quite a number before they started to cross Tehuantepec, but I find the service is not as good now as it was before, on account of crossing the Isthmus.

Q. Have you shipped stoves by the Sunset?

A. Yes, sir.

Q. A good many, haven't you?

A. Quite a number, yes, sir.

5145 Q. What other traffic do you have from the east aside from the stoves?

A. We have sheet iron, tin plate, stamped ware, and things of that kind which go to make up a general tin business.

Q. Have you shipped any from Pittsburg?

A. Some little, yes, sir.

Q. Who routes your shipments from Pittsburg? Are they routed there or here?

A. I route them here.

Q. Have you gotten freight from Pittsburg by New Orleans?

A. I may have shipped a car a long time ago. We ship usually U. P. and C. P.; we have got two or three cars now that come that way.

Q. Which way?

A. U. P. and C. P.

Q. You don't remember whether you shipped by New Orleans or not?

A. I think a long time ago we tried a car that way, but it is so long that——

Q. That is not your ordinary way to ship?

A. No, sir; the ordinary way is the other way.

Q. Do you ship any by the Santa Fe?

A. I did, quite a number of years ago, patronize the Santa Fe, and I ship now a few local shipments but not full cars, that originate around Chicago.

Q. You say you are not using the Sunset Route at present?

A. Yes, we are using it; we ship that way, but not the stoves, because I have adopted another plan of routing them all-rail, because I believe they come in better condition.

Q. They don't have to be transferred?

A. They don't have to be transferred, and we have a system,

5146 that I arranged some years ago, of building them right in the cars, and for a while Sunset came first rate, but lately they have not been coming so good. The same fault lies with the

American-Hawaiian. Their transferring naturally breaks them up, although we crate them all to obviate breakage.

Q. Do you have shipments originating around Cincinnati?

A. Yes.

Q. Do you have any shipments from Cincinnati or that territory?

A. Nothing that I can remember of. Might be some little local affair.

(No cross-examination.)

An adjournment was then taken until the morning of Thursday, May 13, 1909, at 10.30 o'clock.

5147 UNITED STATES DISTRICT COURT ROOM,
SAN FRANCISCO, CAL.,
Thursday, May 13, 1909—10.30 a. m.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present on behalf of the Complainant, Mr. C. A. Severance and Mr. G. E. Husted; on behalf of the Defendants, Mr. R. S. Lovett and Mr. Peter F. Dunne.

Mr. SEVERANCE. I offer in evidence the testimony given by the defendant E. H. Harriman, in the case of State of Minnesota *v.* Northern Securities Company et al., at the hearing held in New York, November 21, 1902, and sworn to before Frederick G. Ingersoll, the Special Examiner, November 24, 1902, as the same appears in the printed record of the testimony in that case, Vol. 2, pages 569 to 579, inclusive, as follows:

E. H. HARRIMAN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. MUNN:

Q. Mr. Harriman, you are a member of the board of directors of the Union Pacific and chairman of its executive committee, I believe?

A. Yes, sir.

Q. You are also officially connected with the board of directors and the executive committees of the allied interests of the Union Pacific?

A. Nearly all of them.

5148 Q. And you held such positions during the year 1901?

A. Yes, sir.

Q. On or prior to May 9, 1901, had you, acting for the companies or railway interests that you represented, acquired certain stock in the Northern Pacific Railway Company, amounting in round numbers to about seventy-eight million dollars, par value?

A. Yes, sir.

Q. And that stock stood in your name, and that of Mr. Pierce, holding it for interests that you represented?

A. Yes.

Q. Did J. P. Morgan & Company, or any member of that firm, open negotiations with you, looking to the purchase or acquisition of such holdings during the fall of 1901?

A. Does it make any difference whether I opened the negotiations with them, or they with me? I don't remember. It was either one or the other. The negotiations were opened. Or they may have been opened by some intermediate party. I don't remember just how it was.

Q. At what time were those negotiations opened?

A. It would be difficult for me to state within a month. It was September or October, I should think.

Q. It was either during the month of September or October, 1901?

A. I should think so.

Q. How long did those negotiations continue before they were finally consummated?

A. I should think about a month or six weeks; possibly two months.

Q. With whom did you have your first dealings in these negotiations, if you remember?

A. I couldn't remember.

Q. Was it with Mr. Bacon, of J. P. Morgan & Company?

5149 A. I had many talks with Mr. Bacon. I had talks with nearly every member of the firm.

Q. In these negotiations were they acting for themselves, or acting with the understanding that these securities or this stock was to be turned over to some holding company when organized?

A. They never disclosed to me whether they were acting for themselves or somebody else.

Q. Before the negotiations were finally closed was it understood that you were to take some stock in a company to which this stock was to be transferred?

A. That is my recollection.

Q. And was that the Northern Securities Company?

A. It never was designated by any name.

Q. You didn't learn what company was to take it until you received the stock of that company in exchange?

A. Practically at that time.

Q. Did you understand, from the beginning of these negotiations, that this stock was ultimately to be turned over to some holding company which was to be organized?

A. No, I can't say that there was any understanding at the beginning of the negotiations for a settlement of whatever differences we might have in regard to that stock, whether it was to be taken by them or by a holding company, or how it was to be paid for. It was only towards the end, when the thing crystallized, that the suggestion was made that payment should be made partly in cash and partly in a holding company stock. I think it was just toward the end of the negotiations, when we were considering whether we would break away or get together on it.

5150 Q. Well, did you understand at any time that they were acting for themselves in the matter and expected to take the stock themselves?

A. I had no understanding upon that subject.

Q. They were simply trying to secure this stock on some basis, then?

A. That is the substance of it.

Q. And it was not until toward the end of the negotiations that you learned they were acting for some holding company?

A. I didn't say I understood they were acting for a holding company. They didn't disclose to me that they were acting for anybody else at all during the negotiations.

Q. Well, you finally learned that the stock was in fact to be turned over to a holding company?

A. There never was anything on their part, it seems to me, that would lead me to infer that they were to turn that stock over to a holding company. Towards the end, when the matter crystallized, and when we were very nearly at the end of our tether, they offered to pay for these shares, in the stock of a holding company so much and so much in cash. Now, there was nothing said as to whether they would turn this stock over to a holding company or whether they would hold it themselves; but they would give us that holding company's stock in part payment.

Q. When did you learn that? How long before you actually delivered the stock?

A. Before we delivered our shares?

Q. Yes.

A. It was several days; I don't remember just when; perhaps two or three days; it may have been within three or four days, or perhaps two days. I have a great deal to do, Mr. Munn, and since our talk the other day I have been trying to refresh my mem-
5151 ory on this very thing; but I was pretty busy in other matters at that time, and have been since.

Q. When you found that you were to take the stock of some other company in part payment for this stock, of course you knew then that they were acting for a holding company, did you not?

A. I don't see how I could know.

Q. Well, did you, Mr. Harriman?

A. No, I don't see how I could.

Q. When did you first learn that this stock was to be delivered to the Northern Securities Company?

A. When it was delivered.

Q. That was the first you knew about that?

A. That is my recollection; the first I knew was when it was delivered to that company.

Q. When did they first make a proposition to you to make payment for this, or part payment for it, in the stock of some other company?

A. I think that was towards the end of our various conferences and negotiations, as I said; within a few days, perhaps, of the time the thing was absolutely closed.

Q. Now, during these various conferences you had when these negotiations were pending, what was the talk about payment for

your stock? Was it to be paid for in cash, or how were they to pay for it?

A. I don't recollect that there was anything said as to just how it was to be paid for until towards the end.

Q. What did these negotiations relate to, then? Whether you would surrender your stock or give it up?

A. Whether we would do anything with our stock except to stand where we were on the basis of holding preferred and common stock.

5152 Q. I suppose when you acquired the stock you supposed you had acquired a controlling interest in the Northern Pacific?

A. Practically that is what we thought.

Q. And did they contend that they had the right to retire this preferred stock which you held, without your consent?

A. Yes, sir.

Q. That contention was made during these negotiations?

A. I think steps were taken to retire it, before the negotiations were ended.

Q. You mean that official action had been taken, or that they told you they were going to retire it?

A. I think action had been taken.

Q. The record shows that the action taken to retire the preferred stock was on November 13, 1901.

A. It was about that time, then.

Mr. YOUNG. And the record shows that your sale was closed after the 15th.

WITNESS. Then, I say it was practically about that time.

Q. When in these negotiations did you first learn that they intended to retire the preferred stock?

A. I think when the action was taken.

Q. Up to that time, then, you supposed you had a controling interest in the Northern Pacific by your holdings?

A. Yes, sir.

Q. And why were these negotiations pending, then, looking toward a settlement of your disputes, if you had started in to buy a
5153 controlling interest in the Northern Pacific and supposed you had it, and no questions were raised about that retirement?

A. Well, of course it was stated to us that this preferred stock could be retired.

Q. Who made those statements?

A. Everybody. It was published in the papers. Statements were made by the directors and by people connected with the company, and published in the papers. I think you will find public statements were made at that time, that that was the intention. But of course the actual steps taken for that purpose were not taken until about the time we made our trade. And if they hadn't been taken and it hadn't been retired, we probably would have been in control.

Q. You understood, then, during these negotiations and prior to the time you closed the transaction——

A. That there was a probability——

Q. ——that there would be an effort made to retire that stock without your consent?

A. A probability of it, yes.

Q. Did Mr. Morgan, or any of the representatives of J. P. Morgan & Company, with whom you negotiated, state to you that they intended to do that?

A. I imagine they did. I don't remember just what——

Q. Well, that was one of the principal inducements that led you to finally surrender your holdings, was it not?

A. Practically.

Q. When did this discussion regarding the retirement of the preferred stock first come up, as you remember it?

A. I think in the summer of 1901.

Q. So you had that in mind, when negotiations were first
5154 opened between yourself and the firm of J. P. Morgan & Company, of course?

A. I presume that was one of the influences. I don't know whether I had it in mind or not. I didn't know just what we would do.

Q. At the time you finally consented to accept in part payment for your holdings, stock in a holding company, did you insist upon any basis on which any other stock of the Northern Pacific Railway Company should be acquired by that holding company?

A. No, sir.

Q. You finally agreed to turn in your holdings and receive from the Northern Securities Company upwards of eighty-two millions in stock of this company?

A. Yes, sir.

Q. Did you know at that time on what basis this holding company was to take in any other Northern Pacific or Great Northern stock?

A. Yes, sir.

Q. On what basis?

A. $115.

Q. For the Northern Pacific?

A. Yes.

Q. And what for the Great Northern?

A. $180.

Q. Did you make any request or demand that they should not take any of the stock of either of these companies at a higher rate than that?

A. No, sir.

Q. Did you understand that they would not?

A. I did not.

Q. Were you willing to surrender your holdings to a company and allow it to determine whether they would exchange their stock with some other holder for twice the amount that you were getting?

A. Not if I supposed they would do it. But there was no stipulation.

Q. Well, you understood they would not?

5155 A. I don't think the thought crossed my mind.

Q. Did they represent to you that that was the basis on which they were going to take in the stock?

A. The statement was made to me that they would put this Northern Pacific stock into a holding company and give us—not this Northern Pacific stock, but that they would give us in part payment a holding company's stock on the basis of 115 for Northern Pacific, and, if Great Northern were taken in, on the basis of 180 for Great Northern. They didn't state how much they were going to take in or how little they were going to take in; nor did I ask them to stipulate that they would not take any more than a certain amount, or to agree to take a minimum amount. The statement was simply made that they were going to form a holding company or had formed a holding company and would pay us in this stock, and that those were the terms on which it was to be bought.

Q. Did they state to you that if they took in any other stock than what you would surrender to the holding company, they would take it on the basis of 115 for the Northern Pacific and 180 for the Great Northern?

A. I don't think that statement was ever made. It was a simple statement that they were going to exchange these shares of Northern Pacific and Great Northern on such a basis, and that they would make us part payment in that stock.

Q. That is what I want to get at. They told you, then, that certain of the holders of the stock of the Great Northern and the Northern Pacific were going to exchange their stock for the stock of the

5156 Northern Securities Company, on the basis of 115 for the Northern Pacific and 180 for the Great Northern?

A. They didn't say certain ones were, but they were going to form this holding company, and that they would pay me in the holding company's stock, which stock should be issued on that basis. They didn't say that they had agreed to exchange certain stock.

Q. No, but what I want to get at is this. Didn't you understand from their statements that the basis of exchange, if any was made, was 115 and 180?

A. Yes.

Q. That is, 115 for Northern Pacific and 180 for Great Northern?

A. Yes.

Q. Were you consulted at all regarding the formation of this holding company?

A. No, sir.

Q. You didn't know where it was going to be organized?

A. No, sir.

Q. And had nothing to do with it?

A. No, sir.

Q. You were not consulted about the retirement of the preferred stock either, were you?

A. No, sir.

Q. Did you make any inquiries regarding who were to be the officers of the holding company, or where it was to be incorporated, or the amount of its capital stock, or anything of that kind, before you agreed to accept its shares in part payment for your holdings?

A. I don't know that I made any inquiries. I presume there was considerable talk about it, but I don't remember that I made any inquiry from anybody.

Q. Do you remember any statements made by persons with whom you negotiated, or by Mr. Hill or his associates, who ultimately
5157 formed this company, as to where it was to be incorporated, or the amount of capital stock, or its officers?

A. All I remember is just as I have stated: a statement made to me that if this trade went through they would pay us in the shares of a holding company which would issue its stock in exchange for Northern Pacific at 115 and Great Northern at 180. And I agreed to take so much of that stock in exchange for the shares of the Northern Pacific we held—all the Northern Pacific we held.

Q. But you made no inquiries as to where the corporation was to be formed or the amount of its capital stock?

A. I knew, of course, the amount of the capital stock; but I didn't go into the particulars of the formation of the company at all. That may seem strange. But, in the enormous transactions we have done here, we simply have faith that the man who is doing the thing is doing it properly, or else we don't negotiate or trade with him.

Q. Did you finally consent to surrender your holdings on the basis on which you did, because you had made up your mind they would carry out the determination you had heard expressed, to retire the preferred stock, and thus take away from you the controlling interest in the stock of the Northern Pacific?

A. I think I recollect pretty clearly that from our standpoint we thought it was better for us to accept that price for our stock than to go into a legal contest.

Q. And you understood that if you did not do that, you would have a legal contest on that question?

A. Well, we took it for granted, naturally, action having been taken determining to retire the preferred stock.

5158 Q. Well, action was not taken to retire the preferred stock until your negotiations had nearly reached a conclusion.

A. Yes, but they had not reached a conclusion.

Q. That is, you waited until the very last moment to see if they would do what you understood they would do.

A. Well, we were very patient.

Q. Then, if such action had not been taken you would not have surrendered your stock?

A. I don't know. That is a condition we did not have to meet. I don't think I could answer that question fairly, nor do I think

it is exactly a fair question; because the board of directors might have determined (if they had not done it) to have sold our shares for less.

Q. Well, you were acting on behalf of your company largely by yourself at that time, I suppose?

A. Largely.

Q. And your actions were guided by what you have stated?

A. By what I found, the surroundings, yes.

Q. When you began buying this stock for your company or companies, you did it with the expectation of acquiring control in the Northern Pacific of course?

A. Or an influential voice in the management.

Q. And you knew that you did in fact have a majority of the combined stock of the Northern Pacific after you got through with your purchases.

A. Certainly.

Q. And would continue to control that company unless they retired your preferred stock?

A. Or unless we sold it.

Q. Of course, you knew, during these negotiations, that Mr.
5159 Morgan and Mr. Hill, and the stockholders of the common stock of the Northern Pacific who were co-operating with them or allied with them, claimed to control the Northern Pacific by virtue of a majority of the common stock?

A. Naturally.

Q. Did they claim to you during these negotiations that they had such majority of the common stock?

A. I don't remember that they did. That was the general talk. I don't think it was necessary for them to even make the statement.

Q. You knew that, of course?

A. Naturally. It was known by everybody. I think it was not necessary for them to make that statement to me, because among the other statements, as I say, about the retiring of the preferred stock, was a statement made and published in the papers.

Q. And they never disclosed to you for whom they were acting until the transaction was ready to be closed?

A. Do you mean Morgan?

Q. Yes.

A. Do you mean the exact company?

Q. Yes.

A. My recollection is that he did not. In fact I don't think this transaction was closed until practically the very minute the payment was made. I think there was considerable discussion and dispute as to the final payment, and about—I don't remember now whether it was the amount to be paid or whether it was the amount of stock to be delivered; I think it was the amount of stock to be delivered. They supposed we had somewhat more stock than we really had.

Q. When did you have your stock transferred on the books of the Northern Pacific Railway Company in the name of yourself and Mr. Pierce?

A. I don't remember. It must have been some time before that.

5160 Q. It was prior to the annual meeting in October, wasn't it?

A. I think so, yes.

Q. And you had all your holdings transferred at that time?

A. Practically all. I don't think it was all; I think nearly all was though. There may have been some of the stock held out; I don't remember.

Q. During these negotiations, did the representatives of J. P. Morgan & Company, with whom you dealt, tell you that unless they organized a holding company and this stock was turned over to such holding company that the transaction would not go through?

A. No. I don't think any such statement was necessary.

Q. Well, was any such statement made?

A. I don't remember that the question ever came up. This was a running negotiation, and it was difficult to tell what either side would do. I think until practically the last minute I didn't know what I would do.

(No cross-examination.)

E. H. HARRIMAN.

Subscribed and sworn to before me this 24th day of November, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

Mr. LOVETT. It is admitted by the Defendants that the foregoing is a correct copy of the testimony of said witness in said case, but it is objected to as evidence in this case upon the ground that it is hearsay and irrelevant.

5161 JOHN W. CHAPMAN,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Chapman, where do you live?

A. San Francisco.

Q. What is your business?

A. I am manager of the traffic department of the Pacific Hardware & Steel Company.

Q. For how long?

A. Two years.

Q. Previous to that what was your business?

A. I was connected with the O. R. & N. Company and Southern Pacific Company at Portland, and all the Harriman lines as contracting freight agent at Portland, for a period of about eight months, and previous to that time I was in the general freight department of

the O. R. & N. and Southern Pacific Company at Portland, in the rate and tariff department, under Mr. R. B. Miller. I was in there for approximately between two and three years.

Q. What year did you go to Portland in Mr. Miller's department there?

A. 1904, I think it was.

Q. What was Mr. Miller's position when you went there?

A. He was general freight agent of the O. R. & N. Company when I went to Portland.

Q. Did he afterwards become——

A. And he afterwards became general freight agent of the O. R. & N. Company and the Southern Pacific Company lines in Oregon when the offices there were consolidated.

Q. And what did you say your position was in the office?

A. When I first went in there I was in the rate department,
5162 answering rate questions, and rate and tariff clerk, and after that I took charge of the rate and tariff department.

Q. Just explain what your duties were when you were in charge of the rate and tariff department. Did you have anything to do with the making of rates?

A. The rates were made by the traffic officials and were turned over to the rate and tariff department to handle the details, to look after the publication of the rates.

Q. What rates were made under the supervision of Mr. Miller? Did he make through rates, local rates, or what?

A. All kinds of rates—through rates and local rates; made local rates on the O. R. & N., local rates on the Southern Pacific, and joint rates. The joint rates between the Southern Pacific and the O. R. & N. were made, of course, after conference or correspondence with the San Francisco office, and he also made through rates between Portland and eastern points; that is, by conference with the other carriers interested.

Q. Did your office come in contact with the Chicago office?

A. Mr. Stubbs' office you have reference to?

Q. Yes.

A. The rate and tariff department didn't. Mr. Miller's office did, of course. The correspondence with that office was always handled by one of the officials.

Q. And so far as you personally are concerned, all the instructions you got were from Mr. Miller?

A. Yes, sir.

Q. And after the offices were consolidated, you had to do with the making up of tariffs on both lines?

A. That is correct.

5163 Q. Southern Pacific clear through to the east, the O. R. & N. clear through to the east, as well as local tariffs?

A. That is correct, yes, sir. Well, the tariffs all the way through to the east were not made by us. They were published by the Trans-

continental Freight Bureau. Of course we did publish some tariffs on lumber and such like.

Q. Were you there previous to the time that the tariffs to Salt Lake, Utah, common points, by way of Sacremento, were taken out?

A. No, sir, I was not.

Q. They were not in existence when you were there?

A. No, sir.

Q. The only way to reach Salt Lake from Portland over your rails was over the O. R. & N.?

A. Yes, sir; the rates were lower that way. Of course you could move business the other way at high rates—combination of locals.

Q. What was the difference in the rate, do you remember, on lumber to Salt Lake and Portland?

A. No, I couldn't say.

Q. 2½ cents a hundred, or don't you remember that?

A. I couldn't say. I wouldn't care to make the statement, because I don't call it to mind.

Q. At the time you went there was lumber from the Willamette Valley moving to Salt Lake by being brought down to Portland and thence sent over the O. R. & N.-Short Line?

A. We had lumber rates in effect, yes, sir, from the Willamette Valley points on the Southern Pacific lines by the O. R. & N. and Oregon Short Line.

Q. That is the way the traffic moved, isn't it?

A. Yes, sir.

Q. Since you have been with the Pacific Hardware & Steel Company, is your business solicited by the Southern Pacific
5164 agency here in this city?

A. Yes, sir, it has been.

Q. And by what route do they solicit your business from the seaboard?

A. On Atlantic seaboard business they have always expressed a preference for their Sunset Gulf route. Business originating in other territories, they have not really expressed themselves between the El Paso and the Ogden gateways. I am speaking now of the Southern Pacific representatives that call at my office.

Q. Do you ship to Portland?

A. Yes, sir.

Q. By what route?

A. By the Southern Pacific Company and the San Francisco & Portland Steamship Company, and sometimes by outside steamers that are not operated regularly.

Q. The Portland & San Francisco Steamship Company is the company that took over what is called the O. R. & N. boats?

A. Yes, sir, that is correct.

Q. Do you ship to Montana points?

A. No, we don't get into Montana in a jobbing way.

Q. Do you get into southern Idaho?

A. Yes, we get into southern Idaho and Oregon and Washington.

Q. How does your traffic move to southern Idaho points?

A. By steamer to Portland, and thence O. R. & N. and Oregon Short Line from Portland.

Q. Does any of it move by Ogden?

A. No, sir.

Q. Has it at any time during the two years you have been with the Pacific Hardware Company?

A. No, sir; you can't ship that way on account of the rates.

Q. Did those rates change at any time after the time you went in?

A. You mean the rates from here to southern Idaho?

5165 Q. Yes, sir.

A. No, there has been no material change. There may have been a few commodities that have been changed, but there has been nothing material.

Q. There has been no change in the Ogden rate since you went in?

A. No, there has been no change in the Ogden rates.

Q. I mean southern Idaho by Ogden.

A. Yes, I understand.

Q. You understood what I meant?

A. Yes, I understood.

Q. Do you bring any stuff from the east by boat?

A. By steamer?

Q. Yes.

A. Yes, we bring stuff by the Panama and the Pacific Mail steamship companies and the American-Hawaiian line.

Q. How long does it take to bring freight to San Francisco by the Panama Route?

A. From the date the goods leave the factory, say the stuff that ordinarily originates in the interior, around Pittsburg or the New England states—the time in transit until they reach San Francisco is about, on the average, 65 or 70 days. Of course a part of that includes the time getting the goods up to New York and the delay at New York and all the time that they are in transit. The time in transit, after the steamer leaves New York until it arrives here, is approximately 45 days.

Q. How is the time by the Tehuantepec route?

A. The time by the Tehuantepec route at the present time, from the date the steamer leaves New York until the date the goods arrive in San Francisco, is 28—well, you might say 30 and 37 days. For instance, one steamer on the Pacific side will bring two cargoes from the Atlantic. Now that is just the time after the sailing from

5166 New York. It takes about the same length of time, two weeks, to get the stuff up to New York and get it out of there.

Q. Getting the goods through New York and getting them loaded on the ships, is there any difference between stuff routed by the Panama Route and the American-Hawaiian line?

A. No, I wouldn't say that there is.

Q. The same thing on that end?

A. Yes, approximately the same thing.

Q. How do the boats of the Pacific Mail compare with the American-Hawaiian boats on this coast?

A. The American-Hawaiian boats are large steamers, freight vessels, with a carrying capacity of about 12,000 tons, and they are modern vessels, can handle large and heavy pieces of material, freight; they can take lots of long structural iron and steel. The Pacific Mail boats are much smaller, they have been in the service much longer, and there are lots of classes of freight that they can't handle, and they are not equipped for the loading or unloading of goods to the extent that the American-Hawaiian are.

Q. What classes of commodities are there that the Pacific Mail boats can't handle?

A. Long lengths of structural material and large-sized plates—iron. And then they can't take large, heavy blooms in our line—billets and blooms. Of course you understand that their boats very often spring a leak coming up the coast, and in figuring on shipping goods by that route you have got to take that into consideration, figuring your salt-water damage as against the American-Hawaiian route.

5167 Q. Is that a usual thing for the Pacific Mail boats to spring a leak coming up the coast?

A. Well, I might say they have had bad luck lately; we have had a good many cases of damage from that cause. I can call to mind now that the last two or three shipments of plate iron that they had in were damaged by salt water. When I took it up with them I was advised that the vessel met with heavy weather and sprang a leak.

Q. Do these classes of iron that can't be shipped by the Pacific Mail boats move by rail?

A. Move by rail and by the American-Hawaiian Steamship Company.

Q. What I want to know is, is it a class of traffic that can be moved by rail?

A. Oh, yes; the largest percentage of it does move by rail.

(No cross-examination.)

An adjournment was then taken until Saturday, May 15, 1909, at the Circuit Court Room (Federal Offices), City of Los Angeles, California.

5168 CIRCUIT COURT ROOM, LOS ANGELES, CAL.,
Saturday, May 15, 1909—10.30 a. m.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, pursuant to adjournment, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance; on behalf of the Defendants, Mr. R. S. Lovett, and Mr. W. R. Kelly.

CHARLES O. WHITTEMORE,

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct-examination by Mr. SEVERANCE:

Q. Mr. Whittemore, where do you live?
A. Los Angeles.
Q. How long have you lived in Los Angeles?
A. About a year and a half.
Q. Previous to that where did you reside?
A. Salt Lake City.
Q. What is your profession?
A. Attorney.
Q. How long have you been a practicing lawyer?
A. Since 1884.
Q. Are you acquainted with Senator W. A. Clark?
A. Yes.
Q. With Mr. J. Ross Clark?
A. Yes, sir.
Q. And with Mr. T. E. Gibbon?
A. Yes.
Q. Were you ever connected professionally and officially with the San Pedro, Los Angeles & Salt Lake Railroad Company?
A. Yes, sir.
5169 Q. In what capacity?
A. I was general attorney of that company for Utah and Nevada from the time of its organization until the first of July, 1907.
Q. What, if anything, did you have to do with the organization of the company?
A. I was one of the incorporators.
Q. One of the incorporators of the company?
A. Yes.
Q. At Salt Lake City?
A. Yes, sir.
Q. When was the road incorporated, if you remember?
A. My recollection is 20th of March, 1901.
Q. I don't mean to ask you the contents of the articles, but what was the purpose in view in incorporating that railroad company?
A. It was for construction, maintenance and operation of a line of railroad from San Pedro Harbor, in California, through California and Nevada and Utah to Salt Lake City, and the construction of branch lines of railroad.
Q. Previous to the incorporation of this company, what steps had been taken looking to that end by the gentlemen interested in causing the Salt Lake road to be incorporated?
A. The original incorporators of the road, the promoters of it I might say, the owners of it, had acquired what was known as the

Los Angeles Terminal Railroad property in California. I think that is all that had been done in any active way.

Q. What about a company known as the Utah & California Railway Company? Do you know anything about such a company as that? Did you have any connection with it?

A. Yes.

Q. What connection did you have with that company?

A. Certain maps and data that had been collected by that
5170 company and certain rights which had been acquired by them in the location of a line of railway from Utah toward California, were acquired by the gentlemen who were interested in the enterprise of organizing the San Pedro, Los Angeles & Salt Lake road.

Q. Was that prior or subsequent to the organization of the San Pedro company?

A. It was prior to the organization.

Q. How long prior, as nearly as you can remember?

A. Oh, a month or two. The rights were acquired while the San Pedro Company was in process of organization, I might say.

Q. Now, this Los Angeles Terminal Railroad Company owned a railroad already constructed, did it not?

A. Yes.

Q. Where was it?

A. It had a line extending from Los Angeles to East San Pedro and a line extending from Los Angeles to Pasadena and a short branch line to Glendale (or in that vicinity), a suburb of Los Angeles. That is my recollection of it.

Q. Mr. Whittemore, did you have personal knowledge of the steps that were taken looking to the construction of a railroad by the San Pedro, Los Angeles & Salt Lake road after its incorporation?

A. Yes, with respect to Utah and Nevada I had.

Q. That is what I mean. Will you state what was done, and when, immediately following the incorporation of the company?

A. The first real active work by the San Pedro Company was about the 19th of April, 1901, when we took over the rights of the Utah & California to the right-of-way and grade from Uvada
5171 to Caliente, which was then known as Clover Junction, and from Clover Junction to Pioche, and assumed the active work of locating and constructing railroad grade in Nevada.

Q. Do you mean the 19th of April or the 19th of March?

A. The 19th of April.

Q. Do you know Mr. Deal?

A. Yes.

Q. To refresh your recollection, didn't you employ Mr. Deal and send him down there with a force of men and teams on the 6th of April?

A. Yes, sir, but that was acting under the Utah & California.

Q. Oh, yes; I remember now. I am ahead of my story. What was done toward this construction under the name of the Utah & California organization?

A. About the 6th or 7th of April, 1901, a force of men was put on the old grade extending from Uvada to Clover Junction, to repair the grade and take possession of it.

Q. Is Clover Junction the same place now called Caliente?

A. Yes.

Q. At the time that crew of men were put to work had any steps been taken by the Oregon Short Line Railroad Company or the people interested in it (I mean the company or any subcompany) to take possession of and occupy that grade?

A. Not that I know of. There had been no active work or actual work done by any company up to that time in the way of repairing or doing any construction work.

Q. How soon after the 6th of April did you go down to Uvada yourself?

A. I think the day following the commencement of the work by the Utah & California.

Q. Then what did you observe, when you arrived there on
5172 the 7th of April as to there being any other force of men at work other than the ones under Deal?

A. The Oregon Short Line had assembled some construction material, ties and rail, and had a force of men laying the track on this grade.

Q. Which side of the state line?

A. They were on the Utah side of the state line the day that I got there; they had about 500 feet of track to lay before they came to the Utah-Nevada line.

Q. Mr. Deal had how many men and teams there?

A. He had 12 or 14 men and probably 4 or 5 teams to start with.

Q. And where were they at work?

A. They were at work at the Nevada line and from there into Nevada.

Q. Had any surveying been done before that time under your direction or that of your associates?

A. Nothing but some preliminary work, but I don't know as to that. Mr. McCartney and I had been down over the line, but I don't think any surveys had been made. That was by the San Pedro Company.

Q. How long before that had Mr. McCartney and yourself been down over the line and how far did you go?

A. It was two or three months before. We drove down along this old grade, through these tunnels, to see what the physical condition of the property was.

Q. What was the purpose of your visit there with Mr. McCartney?

A. With a view to acquiring the rights to the old grade and right-of-way for the San Pedro Company when it should be organized.

5173 Q. What transpired down there along this grade or below there after this time that you went down on the 7th of April, 1901?

A. Well, the Short Line company continued to lay their tracks along the grade, and we did all we could to oppose them and keep possession of the grade.

Q. In what way did you endeavor to oppose them and in what way did they take possession?

A. We adopted pretty nearly every device that we could think of. We filled in the cuts with brush and timber and took possession of these tunnels; and they, in turn, as their track would be extended, having a very much larger force of men, would remove the obstructions and go ahead with their work.

Q. Under what company were you claiming the right to occupy this at that time?

A. Up to the 19th of April all our work was done in the name of the Utah & California Railroad Company (or Railway—I don't remember which).

Q. Was that company owned by your associates?

A. We had negotiated with them for whatever rights they had to this old grade and for a lot of maps and data that they had relating to this line of railroad.

Q. What change took place on the 19th of April?

A. I think it was the 19th of April that the San Pedro Company took charge of the work themselves, or it was taken charge of in the name of the San Pedro Company from that time on.

Q. Do you remember a suit brought in the United States Circuit Court for the District of Nevada, in which the Utah, Nevada & California Railroad Company was complainant, and the Utah & California Railway Company and the Empire Construction
5174 Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly, and H. B. Maxson were defendants?

A. Yes, very well.

Q. You were a defendant in that suit?

A. Yes, sir.

Q. And did you also act as counsel for the defendants in that suit?

A. As one of the counsel, yes.

Q. Without taking the trouble to go through these pleadings in detail, what was the property that was the subject of litigation in that suit, in general?

A. It was the railroad grade that had been constructed from Uvada to what was then known as Clover Junction and from Clover Junction to Pioche, and the question of right-of-way for railroad purposes from Clover Junction southwesterly to the Nevada-California state line, through the State of Nevada.

Q. About how far is it from Clover Junction or Caliente to the California-Nevada state line?

A. About 175 miles, I believe.

Mr. SEVERANCE. Judge Kelly says we may use his office copy of certain documents, the originals of which we do not now have, but he would like to have his copies returned. The reporter may make an extra copy of these documents and the same may be filed in lieu of the original, this being done by consent of counsel.

The EXAMINER. With consent of counsel that may be done, using the extra copy as the original exhibit.

Q. I show you Complainant's Exhibit 170. What is that?

A. This is a copy of the bill of complaint in the Utah,
5175 Nevada & California Railroad Company vs. The Utah & California Railway Company.

Q. In the suit to which I called your attention?

A. In the suit to which you called my attention, concerning which I have been testifying.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 170.

Said exhibit is as follows:

COMPLAINANT'S EXHIBIT 170. (Whittemore.)

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND FOR DISTRICT OF NEVADA.

Utah, Nevada and California Railroad Company, Complainant,

vs.

The Utah & California Railway Company, The Empire Construction Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly, and H. B. Maxson, Defendants.

To the Honorable, the Judges of the Circuit Court of the United States within and for the District of Nevada:

5176 Your orator, the Utah, Nevada & California Railroad Company, brings this its bill of complaint against the above named defendants and alleges as follows:

1. That your orator is a corporation created by and existing under and by virtue of the laws of the State of Nevada, and is a citizen of said State of Nevada.

2. That the said defendants, the Utah & California Railway Company, the Empire Construction Company, and the San Pedro, Los Angeles & Salt Lake Railroad Company, are, and each and every of them is a corporation existing under and by virtue of the laws of the State of Utah, and is a citizen of said State of Utah; that the said defendants C. O. Whittemore, Adam Paul and Virgil Kelly are, and each of them is a resident and citizen of the State of Utah; that the said defendants, J. Ross Clark and T. E. Gibbon, are, and each of them is a resident and citizen of the State of California, and the said defendant, H. B. Maxson, is a resident and citizen of the State of Nevada.

3. That the matter in controversy in this suit exceeds the sum of or value of two thousand dollars, exclusive of interest and costs.

4. The subject of this action is the right of your orator to own, hold and enjoy a certain right of way for a railroad extending from the eastern boundary of the State of Nevada, beginning at a point known as Uvada, in Lincoln County, in said State; thence in a southwesterly course across the said State of Nevada to the southwestern boundary

thereof; and also a branch line of railroad right of way, extend-
5177 ing from a point upon the line above described, designated and known as Clover Valley Junction, said point being distant about forty (40) miles southwesterly from said Uvada, the said point of beginning of the above described line, and extending thence in a northerly or northwesterly direction to the town of Pioche, in Lincoln County in said State, a distance of about thirty miles. The said right of way and claim of your orator arises from, is based upon, and grows out of a certain law of the United States, entitled "An Act granting to railroads the right of way across the public lands of the United States," approved March 3rd, 1875; and the sole right, title and interest of your orator in said right of way is based upon said statute, and the rights, franchises and privileges coming to it by virtue thereof; and its right and title in respect to said line are hereinafter set forth.

5. The "Nevada Pacific Railway Company" was a corporation created in the year 1889, and existing under the laws of the State of Nevada, and its franchises authorized it to construct a railroad connecting with the railroad of the Utah Central Company's railroad, at a point on the eastern boundary of the State of Nevada, now known as Uvada, near Pioche, in Lincoln County, Nevada, and extending thence in a southwesterly course across the State of Nevada to the western boundary line of said State, with two branch roads therein, extending into the counties of White Pine and Nye.

6. That on the 27th day of July, 1889, the said "The Nevada Pacific Railway Company," together with the "Oregon Short
5178 Line Railway Company," the "Utah and Northern Railway Company," "The Utah Central Railway Company," "The Salt Lake and Western Railway Company," "The Utah and Nevada Railway Company," "The Ogden and Syracuse Railway Company," and "The Idaho Central Railway Company," being severally railroad corporations, pursuant to lawful authority, made and entered into certain articles of consolidation and agreement, whereby the said several corporations agreed to and with each other to unite and consolidate, and did unite, form and consolidate their respective organizations, capital stock, railroads, property and franchises of every nature and description, into one company, to continue in existence for a period of fifty years, and to be called and known as the "Oregon Shore Line and Utah Northern Railway Company;" and that thereby each of the several companies assigned, transferred and set over to the said Oregon Short Line and Utah Northern Railway Company, said new corporation, all of the rights, privileges and franchises of each of said companies, parties thereto, and all railroads and other property, real, personal and mixed, all choses in action, all debts owing to said companies, all claims, demands, property, rights of way, leases, leasehold interests, and property of every description, name and nature, belonging to either of said companies, to be held, owned and controlled by said consolidated corporation, its successors and assigns, with all of the rights of each of the said parties, as fully

and completely in all respects and to all intents and purposes as said respective parties thereto did then or could then own, hold, use, enjoy and control the same. For a more particular and complete statement of the terms and conditions of said articles of
5179 consolidation and agreement, reference is hereby made to said articles of consolidation, which will be exhibited to this Honorable Court in due course.

7. That in the years 1889 and 1890, the said Oregon Short Line and Utah Northern Railway Company resolved to construct its railroad upon its right of way, from Milford, in the State of Utah, to a point now known as Uvada, on the Nevada state line; and thence into Lincoln County, Nevada, upon the line authorized under the charter privileges prior to the execution of said agreement of consolidation, owned and enjoyed by the said "The Nevada Pacific Railway Company," and that in pursuance of said determination, the said Oregon Short Line and Utah Northern Railway Company caused a copy of its articles of incorporation and due proof of its organization under the same, to be filed with the Secretary of the Interior; and also caused maps and profiles of the line of its railroad from Milford, Utah, to the Utah-Nevada state line, at the said point now known as Uvada, and also from said last named point, extending thence southwesterly through the State of Nevada to the southwestern line thereof, and also extending from the said point upon said line, known as and called Clover Valley Junction, and hereinbefore described, and extending thence in a northerly or northwesterly direction, to the town of Pioche, in Lincoln County, in said state, a distance of about thirty (30) miles, to be duly prepared and submitted to the proper officer of the Land Department of the United States; and thereupon, said maps and profiles
5180 were by said officer, and by the Secretary of the Interior of the United States, duly approved; all in conformity with the terms and provisions of the aforesaid act of Congress of the United States, entitled "An Act granting to railroads the right of way through the public lands of the United States," and pursuant to the regulations and requirements of the Secretary of the Interior of the United States; and thereupon the said Oregon Short Line and Utah Northern Railway Company became duly vested with the ownership of said right of way, shown and indicated upon said maps, between the eastern boundary of the State of Nevada, and the southwestern boundary of said State, and also upon said branch line from Clover Valley Junction to Pioche, aforesaid, and shown and delineated upon said profiles of said railroad and as approved by the Secretary of the Interior of the United States; that the right, title and interest so acquired by the said Oregon Short Line and Northern Railway Company, has never been forfeited nor declared forfeited by the United States of America, or by any act of the Congress thereof, nor by any proceeding under the direction of the Secretary of the Interior thereof, nor by quo warranto, nor any other proceeding whatsoever, nor in any way nor manner; but the

same continues a valid, subsisting and vested right, title and ownership in said right of way and the grade thereon constructed by the said Oregon Short Line and Utah Northern Railway Company, and its assigns. That during the year 1890, the said Oregon Short Line and Utah Northern Railway Company entered upon the construction of its said line of railway from Milford, in the State
5181 of Utah, to the Nevada state line, and from said state line into and through Lincoln County, Nevada, including the said branch line from Clover Valley Junction to Pioche; and expended in constructing the roadbed and embankments, including bridges, tunnels, and work within and upon said right of way, in all about the sum of one million dollars ($1,000,000.00); of which said sum about six hundred thousand dollars ($600,000.00) was expended upon that portion of the right of way in Lincoln County, Nevada, in the construction of the grade, embankments, cuts, tunnels and work in and upon said right of way, so indicated upon said maps and profiles, and the location of its said road, approved as aforesaid by said Secretary of the Interior; that the said construction of said roadbed and embankment was in the said County of Lincoln, in the State of Nevada, extending from the eastern boundary line of the state to the said point now known as Uvada, southwesterly along the main line of said railway to said Clover Valley Junction, a distance of about forty (40) miles; and from said last named point, northerly or northwesterly upon said branch line to or near the said town of Pioche, a distance of about thirty (30) miles. That after expending said large sums of money upon said work, the said Oregon Short Line and Utah Northern Railway Company became embarrassed financially and was unable at that time to continuously prosecute said work to completion; and it was for that reason only that it temporarily suspended the prosecution of said work; that the said company, neither at the time of the suspension of said work, nor at any time whatsoever, or at all, intended to, or did
5182 abandon the said work or the intention to thereafter, and as soon as it was able, continue and complete the same.

8. That on the 1st day of August, 1899, the said Oregon Short Line and Utah Northern Railway Company made, executed and delivered its certain mortgage to the American Loan & Trust Company of Boston, as trustee, to secure certain negotiable bonds of said company; and by said mortgage pledged and mortgaged, amongst other property, that certain line of railroad and right of way described as follows: All that line of railroad from McCammon, in the County of Bingham, in Idaho, in a general southerly direction through the Counties of Bingham and Oneida in the then Territory of Idaho, thence through the Counties of Cache, Box Elder, Weber, Davis, Salt Lake, Utah, Juab, Millard, Beaver, Iron, San Pete, Sevier, Emery and Tooele, in Utah, together with such branches, relocations and extensions of any of such lines as the Board of Directors might from time to time determine; thence, into the County of Lincoln, in Nevada, to the southwestern boundary line of Nevada,

together with branch lines extending into the counties of White Pine and Nye, in Nevada, together with such railways, branches or extensions of said lines into and through Utah, Nevada, Arizona, Oregon, and California, or any of them, as the Board of Directors might determine; and also all and singular those lines of railway and branches and extensions thereof that the railroad company might thereafter construct or acquire, extending from any feasible point or points upon any of said lines by the most eligible route or
5183 routes, to any or all of such places as the directors of the railway company might be empowered to select or determine by virtue of the charter or articles of incorporation of the railway company, or any of its constituent companies consolidated into the said railway company, or by virtue of any amendments thereof; which main line and branches were already constructed and completed to the extent of 1,456.39 miles of single track or line; and also all and singular the lands, rights of way, and real and leasehold estates already or thereafter to be acquired by the railway company, used or intended to be used for the said above described lines of railway, or any branch or extension thereof, or for the purposes of terminal accommodations, stations, warehouses, machine shops, buildings, structures, approaches and works, or otherwise in connection with or for any purposes of such railways, branches or extensions; also all and singular the franchises, rights and privileges that the railway company then had, or might thereafter acquire for and in respect of the said above described railways or any branch or extension thereof, or the construction, maintenance, improvement, working or use of the same; together with all terminal accommodations, stations, warehouses, machine shops, bridges, buildings, structures, approaches, works, privileges, easements or appurtenances to or with the said premises or any part thereof, then or at any time during the continuance of the said security appertaining or enjoyed.

9. That thereafter in the year 1895, the said Oregon Short
5184 Line and Utah Northern Railway Company, being default in the payment of the interest upon its indebtedness secured by said mortgage, the said American Loan & Trust Company, trustee of said consolidated mortgage, brought its certain bill of foreclosure to foreclose said mortgage in the Circuit Court of the United States for the Districts of Oregon, Idaho, Montana, Wyoming and Utah; and that thereafter in said suit, such proceedings were had that a finding of the amount due upon said mortgage was duly made, and a decree of foreclosure and sale of all of said mortgaged premises above described was entered and made, and thereafter, said mortgage debt not having been paid, the said mortgaged premises, and each of them, and every part thereof, including that hereinabove particularly described were, pursuant to the terms of said decree of foreclosure and sale, duly sold by the special master in said decree named, and pursuant to the terms of said decree, all of the mortgaged property was thereafter by said master, whose sale and conveyance was duly approved, conveyed to the Oregon Short Line Railroad

Company, which company was let into the possession thereof under the terms of said decree of foreclosure and sale, on or about the 15th day of March, 1897. And your orator alleges that the said Oregon Short Line Railroad Company is a corporation created and existing under and by virtue of the laws of the State of Utah, and was organized as such on the 9th day of February, 1897, and has power to own, operate, enjoy, maintain and to further extend all of the lines of railroad right of way and property formerly owned and enjoyed by the said Oregon Short Line and Utah Northern Railway Company.

5185 10. That on the 13th day of October, 1893, the said Oregon Short Line and Utah Northern Railway Company, then being insolvent, impleaded with the Union Pacific Railway Company and other defendants, in the suit wherein Oliver Ames and others were plaintiffs, all of its property was sequestered, taken from its possession and placed in the custody and possession of receivers appointed by the Circuit Courts of the United States for the Districts of Nebraska, Wyoming, Utah, Idaho, Oregon, Montana, and other states, and that the said Oregon Short Line and Utah Northern Railway Company was enjoined and restrained from managing, operating or controling any of its said properties, from and after said 13th day of October, 1893, and was by reason of its said receivership and the injunction orders in said cause entered and made, prohibited during the pendency of said suit, from further operating, managing or controlling its said property, or any thereof, and because thereof, it was unable to take any steps in the further construction of its said railroad.

11. That in the year 1896, pending the said insolvency of the said Oregon Short Line and Utah Northern Railway Company and the receivership thereof, in the said Ames cause, and pending said foreclosure proceedings hereinbefore mentioned, certain persons in the State of Utah formed, or caused to be formed, a corporation, known as the Utah & California Railway Company, one of the defendants herein, the charter powers of which said company were, by its original articles of incorporation, to construct, own and operate a

5186 railroad from Salt Lake City, in the State of Utah, to St. George therein; and by an amendment to said original articles adopted in the said year 1896, it was empowered to construct also a branch line from a point at or near Milford, in Beaver County, Utah, a station of the said Oregon Short Line and Utah Northern Railway Company's railroad as then constructed and finished, to the said line between the States of Nevada and Utah, at a point now known as Uvada; that the said Utah & California Railway Company caused maps of its proposed railroad to be prepared and submitted to the proper Land Officer of the United States for its line of railroad as shown upon its said maps, extending from said Milford station to Uvada in the State of Utah, which said line of its railroad as shown on its said maps, was identical with the constructed roadbed and right of way line of the said Oregon Short Line and Utah Northern

Railway Company, as shown upon its said maps, so as aforesaid approved by the Secretary of the Interior; and the said Utah & California Railway Company also caused to be prepared maps and profiles of its proposed railroad line, extending from the said boundary line between the said States of Utah and Nevada, at said point now called Uvada, into and through Lincoln County, in the State of Nevada, for a distance of about forty miles, to the point known as and called Clover Valley Junction; and also on and upon the said line of railway from said last named point or junction northerly to the said town of Pioche, a distance of about thirty (30) miles; which said maps and profiles were for a right of way identical with and laid upon the line of right of way and railroad grade and
5187 embankments embraced in the maps and profiles and right of way of the said Oregon Short Line and Utah Northern Railway Company hereinbefore referred to and described; and the said Utah & California Railroad Company caused its said maps and profiles covering the said line within the said State of Nevada to be deposited with the said Land Office of the United States for the District of Nevada for approval by the Secretary of the Interior; and your orator avers that none of the said maps and profiles so as aforesaid filed by the said Utah & California Railroad Company over the said line within the said states of Utah and Nevada were ever approved by the Secretary of the Interior; and that no title to said right of way shown upon said maps was ever acquired by the Utah & California Railway Company; and that the said articles of incorporation and corporate franchise of the said Utah & California Railway Company did not embrace any right, franchise or power to construct, maintain or operate a railroad for any distance whatsoever or at all within the said State of Nevada, as will more fully appear by the certified copy of the articles of incorporation of the said Utah & California Railway Company and the amendments thereto hereto attached and marked "Exhibit A" and made a part hereof. And your orator further alleges that the said Utah & California Railway Company had not at the time of making and depositing its said maps and profiles upon the said lines situated in the State of Nevada, any right, franchise or power whatsoever under which it could construct, maintain or operate a railroad in the State of Nevada,
5188 nor under which it could according to the laws of said state acquire any right to construct, maintain and operate a railroad in said State. And your orator further alleges that by the laws of the State of Utah, under which the said Utah & California Railway Company was incorporated, it was required to commence the construction of its railroad and expend at least three percent (3%) of its entire capital stock on the prosecution of the purposes for which the said corporation was created, within three (3) years from the time of its said incorporation; and that in case of its omission to do so, all its charter powers and rights would be forfeited and of no effect; and your orator alleges that the said company did

not within three years, and has not at any time, nor at all, begun the work of construction, or expended three percent of its capital stock on the prosecution of the purpose for which it was incorporated; but on the contrary, alleges that it has never done any work whatsoever in the way of construction and it owns no railroad whatsoever, nor railroad property, and that it has never expended exceeding one-tenth ($\frac{1}{10}$) of three percent (3%) of its capital stock in the prosecution of any corporate or other purpose whatsoever.

12. That in the year 1898, the Oregon Short Line Railroad Company made a certain agreement with one McCune and others providing that said McCune and associates should organize a company to be known as the Utah & Pacific Railroad Company, to build, construct, maintain and operate a railroad from Milford station, on the line of said Oregon Short Line Railroad in Beaver County,
5189 Utah, to Uvada on the Nevada state line; under which agreement the Oregon Short Line Railroad Company reserved to itself the option to purchase and take over from said McCune and others, the majority of the capital stock and securities of the said Utah & Pacific Railroad Company; that pursuant to said agreement, a corporation of the State of Utah was organized by the name aforesaid, and said line of railroad from Milford to Uvada was so as aforesaid by it constructed; that the Utah & California Railway Company, defendant as above mentioned, waived its pretended rights under its said filing, in favor of said Utah & Pacific Railroad Company, and consented that the Utah & Pacific Railroad Company should construct, maintain and operate its railroad upon said right of way, and the said Oregon Short Line and Utah Northern Railway Company and said Oregon Short Line Railway Company assigned and transferred their rights to said right of way and railroad grade between the said points; and said road of the Utah & Pacific Railroad Company was constructed and is in operation from Milford to Uvada as aforesaid; that said Oregon Short Line Railroad Company has exercised its option to take said road and has become the owner of all of the stocks, bonds, securities and property of said Utah & Pacific Railroad Company and is now in possession thereof, and is operating said road to Uvada as aforesaid, and said railroad is now operated to Uvada as aforesaid under the control of the said Oregon Short Line Railroad Company; that the line of railroad so operated by the said Oregon Short Line Railroad Company and its management, including the said Utah & Pacific Railroad Company,
5190 extends from Salt Lake City in the State of Utah, continuously to said Uvada, a distance of two hundred and ninety-seven miles, and at said Uvada is connected with the railway line of the said complainant now under construction, and constructed from said Uvada, in Lincoln County, Nevada, for a distance of about nine miles, so that the said three railroads constitute a continuous line southwesterly from said Salt Lake City for a distance exceeding three hundred miles.

13. That on the 2nd day of February, 1899, the Utah, Nevada & California Railroad Company, your orator, was organized in the State of Nevada, under the laws of said State, and is an auxiliary company of said Oregon Short Line Railroad company for the purpose of constructing a railroad from the eastern boundary of the State of Nevada, at a point near Uvada aforesaid, southwesterly across the State of Nevada, to the southwestern boundary of said State; and also a branch line extending from a point on the aforesaid main line of railway, called Clover Valley Junction, and about forty (40) miles southwesterly from the said boundary line between the State of Utah and Nevada, and extending thence in a northerly or northwesterly direction a distance of about thirty (30) miles, to the town of Pioche, in Lincoln County, Nevada; and for the purpose of utilizing, using, occupying the line of right of way and railroad grade of the said Oregon Short Line and Utah Northern Railway Company hereinbefore referred to, but to so occupy the same with the consent of the Oregon Short Line and Utah Northern Railway Company aforesaid and its assign, the Oregon Short Line Railroad
5191 Company; that after its said organization, said Utah, Nevada & California Railroad Company caused to be prepared maps and profiles of its said line of railroad, showing the line thereof across the public lands of the United States from Uvada to Clover Valley Junction, a distance of about forty miles, the same being identical with the line of right of way of said Oregon Short Line and Utah Northern Railway Company hereinbefore referred to, and caused its said maps and profiles to be deposited in the proper land office in the State of Nevada under the regulations and requirements of the Department of the Interior prescribed under and by virtue of the Act of Congress aforesaid; that by reason of the apparent conflict in the location indicated by said several sets of maps, the Department of the Interior required a hearing to be had before said local land office at Carson City, Nevada, to determine the rights of your orator and of the Oregon Short Line and Utah Northern Railway Company and the said Utah & California Railway Company in respect to said location and right of way; that a hearing was had in said local land office pursuant to the direction of the Secretary of the Interior; but said local land office erroneously and wrongfully held that the grant to and right of way of the said Oregon Short Line and Utah Northern Railway Company under its said approved maps and location, were forfeited because said line was not built within five years, and erroneously recommended that the maps and location of the said Utah & California Railway Company should be approved; and failed and neglected to recommend that the said
5192 maps and profiles filed by your said orator should be approved.

But your orator avers and shows to your Honor that heretofore, to wit: on the 24th day of April, 1901, the honorable Land Commissioner of the General Land Office, having before him the said testimony taken by the said Register and Receiver and their findings and recommendations thereon, did correct the said error so made by the

said Register and Receiver, and did recommend to the Secretary of the Interior that the said maps and profiles of the said Utah & California Railway Company be disapproved, and the maps and profiles so presented by your orator be approved, and the same were approved by the Secretary of the Interior on the 25th day of April 1901.

14. Your orator further shows that the Utah & California Railway Company pretends and claims that in January, 1901, but a long time after the filing of its maps aforesaid, at a meeting of its stockholders, it amended its articles of association so as to create a right, power, and franchise for it to build, construct, maintain, and operate a railroad in the State of Nevada; but your orator charges and alleges that said Utah & California Railway Company has not taken any steps whatever to build, construct, maintain, and operate a railroad, either under its general charter or its so-called amended charter, and that it has not taken any steps to or done any act whatever in respect of complying with the laws of the State of Nevada pertaining to the construction, maintenance and operation of a railroad in said State, by railroad corporations organized under the laws of other States; and that it has no power to construct, maintain
5193 and operate a railroad in said State of Nevada, and has not complied with the regulations of the Land Department, or the laws of Congress aforesaid, in respect to any railroad proposed to be built or operated by it in the State of Nevada, and notwithstanding its said amendment to its said articles of incorporation last aforesaid, all its said acts in making surveys and filing maps in the said land office in the District of Nevada, are null and void and secure to it no right whatever.

15. That the San Pedro, Los Angeles and Salt Lake Railway Company is a corporation under the laws of the State of Utah; that it has not complied with any of the laws of the State of Nevada concerning the construction, maintenance and operation of a railroad in the State of Nevada, by a railroad corporation formed or created under the laws of another State; that it has not made, filed or prepared to be presented to the Secretary of the Interior, or to any land office of the United States, any map or profile showing the location of its road over and across or into any part of the State of Nevada; that it is now conspiring and confederating with said Utah & California Railway Company, and the other defendants herein, to obtain from said Utah & California Railway Company a pretended right to construct its railroad upon the line of location indicated upon the maps of the Utah & California Railway Company hereinbefore referred to, and thus and thereby to construct, maintain and operate its railroad upon a line of right of way indicated upon said approved maps of, and owned by said Oregon Short Line and Utah Northern Railway Company and its assign, the Oregon Short Line Rail-
5194 road Company, and your orator, their assignee.

16. Your orator further shows that it has entered upon said line of right of way formerly owned by and indicated upon the approved maps of the said Oregon Short Line and Utah Northern Rail-

way Company and upon which the said last named company had as aforesaid constructed a railroad grade from the eastern boundary line of the said State of Nevada from said point now called "Uvada" southwesterly to Clover Valley Junction for a distance of forty (40) miles, or thereabout, and from said last named place northerly to or near the town of Pioche in Lincoln County in said State of Nevada, a total length of about seventy (70) miles, and is now in the possession and occupation of the whole of said railroad grade, embankment and right of way; and has provided for the construction of its railroad thereon, a large amount of material, to wit: Forty (40) miles and upwards of railroad iron and other track material, consisting of ties, bridge material, and all other material and supplies necessary to construct a first-class railroad, the said material so provided at the present time amounting in value to five hundred thousand dollars ($500,000.00) and upwards; and that your orator has constructed nine (9) miles of its road, and distributed twelve (12) miles of ties; and that it is operating a large force of men engaged in the construction of said road, and keeping the same continually supplied with all necessary material for the rapid construction thereof.

Your orator further avers and shows to the court, that
5195 unless it is impeded or obstructed by the defendants herein, their agents and servants, it will immediately and continuously lay down, construct, maintain and operate a railroad over, along and upon the said right of way and the several sections thereof upon said grade and roadbed, so far as the same is constructed, and beyond the same as fast as in due course of business the construction of its said line of railroad can be completed, and will put the same into operation.

That it is the purpose and intention of your orator to continue said construction until its said railway extends to a point of connection with the Pacific Ocean near Los Angeles or other suitable point in the southern part of the State of California.

17. Your orator further alleges that it has obtained from the Oregon Short Line and Utah Northern Railway Company a waiver and assignment of its rights and also of the rights of the Oregon Short Line Railroad Company in and to the said railway grade and embankment, and now owns the same as fully and completely as the said Oregon Short Line and Utah Northern Railway Company and the said Oregon Short Line Railroad Company or either or both of them at any time owned or possessed the said right of way; and that it is entitled to the rights, benefit, ownership and enjoyment of said companies in and to the said railroad right of way and embankment and every part thereof, by virtue of the said assignments and also by virtue of its possession of said grade and the work of constructing a railroad thereon in which it is engaged as afore-
5196 said; and also by virtue of the maps by it made, filed and deposited in the Land Office of the United States for the said District of Nevada as aforesaid; and that by the means aforesaid your orator has acquired in its own right, a good, complete and per-

fect title and vested ownership in and to the said line of right of way for a railroad as indicated upon the maps so filed by it, and by the said Oregon Short Line and Utah Northern Railway Company; and that its said right, title, interest and ownership are vested in it completely and perfectly under the aforesaid Act of Congress of the United States.

18. That the defendants herein, the Utah & California Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, and the Empire Construction Company which said last named company claims to have a contract or agreement with the San Pedro, Los Angeles & Salt Lake Railroad Company for the construction of its proposed railroad, and the said C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly and H. B. Maxson, all of whom are officers, agents or employees of some of the above-named defendant companies, or acting in concert with them and under their direction, together with divers other persons whose names are to the complainant unknown, have at a point at or near tunnel No. 1, on said railroad grade, a distance of about ten and one-half (10½) miles from the said boundary line between the States of Utah and Nevada, at said point known as and called "Uvada" and at divers other places upon said grade, at a greater distance from said Uvada, forcibly entered upon said grade, roadbed, embankment, cuts and
5197 tunnels, and constructed in and upon said line of right of way near the said tunnel, a barbed wire fence enclosing a cut upon said railroad grade and line, and across said right of way and roadbed; and have also built obstructions of trees and rocks at or near the said place, by hauling trees into cuts upon said line of right of way, and rolling from the banks of such cuts, large rocks upon the said trees; thereby constituting an obstruction and barricade for the purpose of forcibly resisting and obstructing your orator, its agents and servants, in and about the work of continuing its construction, and completing and operating its said railroad upon said grade and roadbed.

That said defendants, as your orator alleges on its information and belief and avers the fact to be, basing their pretended right to so resist and obstruct your orator, its agents and servants, on the ground and claim under said maps of the Utah & California Railway Company, and under the said pretended location of its railroad and line of right of way on the said right of way and grade of your orator and its predecessors in interest, and also basing their pretended right upon said erroneous decision of the said Register and Receiver, and which has as heretofore alleged, been reversed by the said Commissioner of the General Land Office, and by the Secretary of the Interior, claim a right, title and interest in and to the said roadbed and right of way, superior to your orator, and seek to exclude your orator therefrom.

That the said defendants and their said agents, officers, serv-
5198 ants and employees have confederated together for the purpose of, and with the intention of, by the means of the barri-

cade, barbed wire fence and other contrivances aforesaid, and are designing and intending to unlawfully, forcibly and violently interfere with, obstruct, and prevent your orator from peaceably and lawfully occupying, possessing, using and enjoying its said right of way and roadbed, and peaceably continuing to construct its railroad thereon.

That the said C. O. Whittemore is the attorney in charge of and directing the operations of the said companies and their said employees; that he has been personally upon the said roadbed and grade and threatened violent resistance.

That as an indication and evidence of the lawless purpose conceived by the said Whittemore and the other defendants herein, and the expectation of violence, the said Whittemore heretofore, on the 20th day of April, 1901, sent a communication to Jacob Johnson, the Sheriff of Lincoln County, Nevada, showing the intention, purpose and expectation of the said C. O. Whittemore and his confederates and other defendants herein; that the said communication dated as aforesaid, is of the following tenor, to wit:

"Jake Johnson, Sheriff of Lincoln County, Delamar, Nev.,

You will please take notice that under a decision of the United States Land Office, and pursuant to the laws of the United States, the men in the employ of the San Pedro, Los Angeles & Salt Lake Railroad Company are in lawful possession of a certain right of way and railroad grade extending in a southwesterly direction from a point on the state line between Utah and Nevada, near Uvada,
5199 a distance of about forty (40) miles, to Clover Valley Junction, and extending thence northwesterly a distance of about thirty-five (35) miles to within about three miles of Pioche, and that a forcible entry on said grade and a forcible disturbance of the possession of said company is threatened by certain persons in the employ of the Oregon Short Line Railroad Company, and the Utah, Nevada and California Railroad Company, and that the men employed by the said San Pedro, Los Angeles & Salt Lake Railroad Company will be compelled to defend their possession, but desire to avert violence; and therefore I demand that you send a sufficient force to protect our peaceable possession of said right of way and grade, and prevent criminal aggression thereon by other persons.

Under the laws of Nevada, a forcible entry and disturbance of peaceable possession without title and by force is a crime, which it is your duty as a peace officer to avert, when advised that such a crime is threatened; and unless you take the necessary steps to prevent the threatened violation of the law, we will be compelled to call upon the Governor for such protection.

Signed "C. O. WHITTEMORE."

And your orator alleges that notwithstanding the said pretence so made by the said Whittemore of the said persons being in lawful possession of the said grade, your orator alleges the facts to be, that at and near the said tunnel No. 1 hereinbefore described, and where

the said barricade and obstructions have been erected on and across the said railway grade, the said defendants have congregated
5200 one hundred men or more near together; and they are not engaged in railroad work or in the construction of a railroad as the said defendants represent and pretend; but on the contrary, they have been camped at said place for several days past, engaged only in constructing barricades and obstructions to the progress of your orator in the prosecution of its work of completing its said railroad, and are so congregated and held in said position for the purpose of unlawfully, forcibly and with violence, obstructing and interfering with the further prosecution by your orator of its said work.

That the said defendant, the San Pedro, Los Angeles & Salt Lake Railroad Company, pretends that it is incorporated for the purpose of constructing a railroad from San Pedro and Los Angeles in the State of California, to Salt Lake City in the State of Utah, a distance of eight hundred (800) miles or thereabout; that said company has not located any portion of said line and is not pretending to do any work elsewhere than upon the said grade belonging to your orator, at a point more than three hundred (300) miles distant from Salt Lake City, and between four and five hundred (400 and 500) miles from San Pedro and Los Angeles.

That at the said place where the said defendants are pretending to construct said railroad, they have no railroad material, ties or iron, nor facilities for transportation, or anything requisite and necessary to the successful building and operation of a railroad; and no means of transportation from said point, either to Salt Lake City or Los Angeles, except by means of teams, all of which facts are
5201 inconsistent with any reasonable, intelligent or real purpose of constructing a railroad; but on the contrary, show the intention of the defendants and their said confederates to merely obstruct and interfere with the operations of your orator in prosecuting its work of building its said railroad.

19. Your orator had well hoped that the said defendant, their agents and servants, would not impede, embarrass, delay or obstruct your orator in the work of constructing its said railroad, and would not (now) permit your orator to construct without delay, hindrance or obstruction, and to maintain and operate its railroad upon said grade and roadbed granted under said Act of Congress as aforesaid; but that said defendants, their agents and servants, conspiring and confederating together as aforesaid, have without right, wrongfully and unlawfully set up a claim of title, interest and ownership in and to said railroad right of way, grade and roadbed; and their said action is pretended by them to be based upon and is made by them, as they claim, under the provisions of the said Act of Congress; and your orator says that the said acts, claims and pretenses of the said defendants, their agents and servants, and their said claim of ownership of the said right of way, roadbed and grade and the making and filing of a claim of right under said maps of the Utah & California Railway Company, as aforesaid, casts a cloud upon the right, title

and interest of your orator to said right of way, roadbed and grade, and the improvements thereon, and the title of your orator to its said railroad now constructed and in process of construction upon the same.

5202 20. Your orator further alleges that the defendants, their agents and servants, by their said acts of entry upon said right of way in force, as aforesaid, and by cutting and throwing the said rocks and timber into the said cuts, and by posting the said force of men upon said line of right of way, are unlawfully excluding your orator and its agents and servants therefrom, and are thereby hindering, delaying and impeding your orator, its agents and servants, in the work of constructing its said railroad, and very materially adding to the expense and cost of said work of construction; all of which acts and doing of the said defendants are contrary to equity and good conscience and against your orator's rights.

Wherefore, your orator invokes the aid of this Honorable court, and prays:

First. That all of the right, title, claim and interest in and to said railroad right of way, roadbed and grade shown and indicated upon said maps and plats filed with the Department of the Interior by the Oregon Short Line and Utah Northern Railway Company and by your orator, be fully, absolutely and completely settled and declared in your said orator, free and clear of any claim, right, title or interest of the defendants, the Utah & California Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, or the Empire Construction Company, and each and every of them or any of the other defendants herein, and that all of the pretended claim, right, title and interest of the said defendants and each and

5203 every of them in and to said right of way, roadbed, grade, embankments and improvements thereon, be found and decreed to be of no effect as against the right, title, claim and interest of your orator.

Second. That the said defendants, and each and every of them, may be forever enjoined and restrained from in any way or manner entering upon said railroad right of way, and from interfering with, hindering, delaying or impeding your said orator, its agents and servants, in any way or manner whatever, in the construction, maintenance, management and operation of the said railroad right of way, or the railroad constructed or to be constructed thereon by your orator; and that upon the final hearing hereof, your orator may be declared and found to be the absolute owner of all of said railroad right of way, roadbed, grade and improvements, and that the said defendants have no right, title or interest therein or thereto; that each of the said defendants may be required to show why your orator should not have the relief hereby prayed, and to answer all and singular the matters and allegations in this bill stated, but not under oath, answer under oath being hereby expressly waived, and that the complainant, your orator, may have such other and further relief as the nature of its case may require.

And may it please your Honors to grant unto your orator a writ of subpœna, to be directed to the defendants, the Utah & California Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Empire Construction Company, commanding them,
and each of them, at a time and under a certain penalty therein
5204 to be limited, to appear before this honorable court, and then
and there to stand to, perform and abide such further order and direction and decree as to this Honorable Court shall seem meet.

And may your Honors also grant a writ of injunction therein and whereby the said defendants above mentioned, and each and every one of them, and also each and every of their servants, agents and employees, should be enjoined and restrained, until the further order of this Honorable Court, from in any manner setting up any claim of right, title or interest in and to said roadbed, right of way, premises and property, and from in any way or manner interfering with, hindering, impeding or delaying your orator, in any manner whatever, in the free use and enjoyment of the said right of way, as shown upon said maps of your said orator, filed by it and as shown upon said maps and profiles of the said right of way as formerly filed by the said Oregon Short Line and Utah Northern Railway Company and from in any manner interfering with, hindering, delaying or impeding your orator in or about the construction, maintenance and operation of the railroad in and upon the lines of the said right of way.

And so your orator will ever pray.

C. S. VARIAN,
P. L. WILLIAMS,
Solicitors for Complainant.

Of counsel—
TRENMOR COFFIN.

5205 UNITED STATES OF AMERICA.

DISTRICT OF UTAH,
County of Salt Lake, ss:

W. H. Bancroft, being duly sworn deposes and says:

That he is an officer, to wit: the President of the Utah, Nevada & California Railroad Company, the complainant herein, and makes this verification upon its behalf.

He further says that the foregoing bill of complaint has been read by him, and that he knows the contents thereof, and that the same are true of his own knowledge, except as to those matters therein stated and alleged on information and belief, and that as to those matters he believes it to be true.

W. H. BANCROFT.

Subscribed and sworn to before me this 26th day of April, 1901.
(SEAL.) JERROLD R. LETCHER,
Clerk United States Circuit Court District Utah.

Q. I show you Complainant's Exhibit 171. What is that paper?

A. This is the answer of the defendant the San Pedro, Los Angeles & Salt Lake Railroad Company to the amended and supplemental bill of the complainant in that case.

Q. I show you Complainant's Exhibit 172. What is that?

A. This is a copy of the amended and supplemental bill of complaint in the case in question.

5206 Mr. SEVERANCE. I offer in evidence Complainant's Exhibits 171 and 172.

Complainant's Exhibit 171 is as follows:

COMPLAINANT'S EXHIBIT 171. (Whittemore.)

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT, DISTRICT OF NEVADA.

Utah, Nevada and California Railroad Company, Complainant,

vs.

The Utah & California Railway Company, The Empire Construction Company, San Pedro, Los Angeles and Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly and H. B. Maxson, Defendants.

ANSWER AND CROSS BILL OF THE DEFENDANT SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Comes now the defendant San Pedro, Los Angeles and Salt Lake Railroad Company, and answering the amended and supplemental bill of the complainant herein:

5207 I. Admits that the defendant The Utah & California Railway Company has conveyed to the defendant San Pedro, Los Angeles and Salt Lake Railroad Company, all of its right, title, estate and interest in and to that certain railroad right of way and grade extending from a point on the Utah-Nevada state line near Uvada in a southwesterly direction a distance of about forty (40) miles to Clover Junction, and thence in a northwesterly direction about thirty (30) miles to a point near Pioche, in Lincoln County, Nevada; but denies that the said railroad right of way and grade or any part thereof was ever acquired by complainant from the United States under or by virtue of its adoption of its route or construction of its road, or the filing of maps and profiles of its road in the proper land office of the United States, or with the Department of the Interior of the United States, or by the approval of said maps by the Secretary of the Interior, or by its compliance with the act of Congress of March 3, 1875, entitled "An act granting to railroads the right of way across the public lands of the United States," or with the rules and regulations of the Department of the Interior of the United States made in respect thereto, or otherwise. Admits that the defendant San Pedro, Los Angeles and Salt Lake Railroad

Company now claims under such conveyance the right, title or interest formerly claimed and held by the said defendant The Utah & California Railway Company.

II. Denies that the maps and profiles of complainant's adopted line of railroad from Uvada to Clover Valley Junction, except as to that part thereof on surveyed lands, was approved by the
5207 Secretary of the Interior upon the 24th day of April, 1901, or upon any other date, or at all.

III. Denies that the maps and profiles of complainant's branch line of railroad extending from Clover Valley Junction, to or near the town of Pioche, in the State of Nevada, were since the filing of complainant's original bill, duly or otherwise approved by the Secretary of the Interior on the day of 1901, or at any other time, or at all.

IV. Denies upon information and belief that since the commencement of this suit, or at any other time, the complainant has caused surveys to be made of its line of location of its railroad, or caused maps or profiles to be prepared showing the line of right of way for its railroad from Clover Valley Junction southwesterly, or in any other direction across the State of Nevada, to the western boundary thereof, or for any part of said distance, or that it caused to be filed in the proper or any land office of the United States its said maps or profiles of its said line of right of way for its railroad across the public lands of the United States, or across any lands whatever from Clover Valley Junction, aforesaid, southwesterly, or in any other direction, or across the State of Nevada, or any part thereof, or through the County of Lincoln, Nevada, or through any part thereof to the western boundary of said State of Nevada, or for any part of said distance, *or elsewhere*, or that its said maps or profiles of the route and line of its said right of way were submitted to the Secretary of the Interior, and by said Secretary of the Interior on
5209 the day of 1901, or at any other time, duly or otherwise approved in pursuance to or in compliance with the terms of the Statute of the United States hereinbefore referred to, or at all.

V. Denies upon information and belief that complainant has duly or otherwise adopted the line of right of way described upon and embraced in said maps or profiles, as the line of right of way for its said railroad, or that it owns or holds the same under or by virtue of the said Act of Congress, or the compliance of complainant therewith, or with the rules and regulations of the Department of the Interior made in respect thereto, or otherwise.

VI. Denies upon information and belief that the complainant since the filing of its said original bill has continuously, or at all prosecuted the work of construction of its railroad upon the line of railroad right of way indicated and shown in its said approved, or any maps and under any right or title thereto conferred upon it by the United States, or under the act of Congress of the United States aforesaid, or that it now has in operation twenty-three (23) miles or

any number of miles of railroad in or upon any line of right of way from the Utah-Nevada state line in the direction of and towards Clover Valley Junction in which said complainant has any title or interest.

Denies upon information and belief that complainant has procured or has on hand a very large amount, or any amount of track material,
or that it is actively, or continuously, or earnestly, or other-
5210 wise prosecuting its work of preparing any railroad right of
way, or roadbed, or construction upon any railroad right of way through Clover Valley Junction, and toward the western boundary of the State of Nevada, owned by the complainant, or in which complainant has any interest whatever. Denies that complainant intends or expects diligently, or in due course of work, or as rapidly as practicable, or otherwise, to lay down or construct the whole line of railroad or any part thereof, or including the railroad upon any branch line owned by defendant, or in which it has an interest towards Pioche.

VII. Denies that since the commencement of this suit, and since any valid survey by complainant of its said main or any line from the Utah-Nevada State Line near the town of Uvada southwesterly past Clover Valley Junction to the Nevada-California State Line, or since the making or filing of its said or any maps, the defendant San Pedro, Los Angeles and Salt Lake Railroad Company, or its agents, or servants, have entered upon complainant's said adopted, mapped or approved line of right of way for the alleged purpose of locating or constructing thereon a railroad, or for any other purpose, or at all.

Denies upon information and belief that the defendant San Pedro, Los Angeles and Salt Lake Railroad Company has ever at any time entered upon any premises or property of the complainant unlawfully, or wholly without right, or at all.

Admits that on or about the 14th day of May, 1901, complainant
served upon C. D. Moore and upon C. O. Whittemore the
5211 notices set forth in paragraph 7 of complainant's amended and
supplemental bill. Denies that defendant is continuing at divers places along any line of right of way of complainant to enter upon or to interfere with complainant's possession of its line of right of way in defiance of complainant's rights or without lawful authority or any authority whatever, or at all. Denies that the San Pedro, Los Angeles and Salt Lake Railroad Company, or its co-defendants herein, their engineers, or agents, or servants, or employees, or either or any of them, have entered upon the said or any right of way of complainant at a point about three miles from said Clover Valley Junction, or at a point upon said or any right of way of the main line or any line of railroad of complainant distant about forty-three (43) miles southeasterly from Uvada, or at any other point or points upon the said or any right of way of complainant, and with a force of men are constructing a grade for a short or any distance, or that said defendants are also at another point distant about thirty (30) miles from the place last aforesaid, and about seventy-three (73)

miles from Uvada, and within the said or any right of way of complainant or elsewhere within or upon any right of way of complainant with any force of men, or teams, have entered upon said right of way, or any right of way of complainant, or are pretending to construct, or are constructing, a railroad grade at said last named point, or at any point or points, or any right of way of complainant's whatever.

Denies that said defendant has ever entered or intruded
5212 upon any right of way of the complainant at said or any places, or that said defendant has ever committed any act not in good faith, or for the purpose of obstructing complainant in the peaceable prosecution of the construction of its railroad. Denies that said defendant, or its engineers, agents, or servants are threatening at other points or places along the said or any line of railroad right of way of complainant to enter thereon, or to otherwise obstruct or impede complainant in the prosecution of its said work, or to defeat it of the peaceable and quiet possession or use of its property.

VIII. Denies that the deed taken and received on the 6th day of May, 1901, by said San Pedro, Los Angeles and Salt Lake Railroad Company from James A. Nesbitt, as treasurer of the County of Lincoln, State of Nevada, was a pretended deed or conveyance, or that said deed pretended to convey from said James A. Nesbitt, as treasurer of said County of Lincoln, Nevada, to said San Pedro, Los Angeles and Salt Lake Railroad Company the property described in paragraph eight (8) in complainant's said amended and supplemental bill, but on the contrary, defendant avers that said deed was a good and sufficient deed and conveyed to said San Pedro, Los Angeles and Salt Lake Railroad Company the property described in said paragraph eight (8).

IX. Denies that the agreement entered into on the 6th day of May, 1901, by the defendant San Pedro, Los Angeles and Salt Lake Railroad Company with John Simpson, Chairman of the Board of County Commissioners set forth in paragraph nine (9) of complain-
5213 ant's amended and supplemental bill was a pretended agreement, but on the contrary, defendant alleges that the same was bona fide, and made for a valuable consideration.

X. Admits that on the 6th day of May, 1901, the defendant San Pedro, Los Angeles and Salt Lake Railroad Company appeared before the Board of County Commissioners of Lincoln County, Nevada, and procured said Board to make and adopt the resolution set forth in paragraph ten (10) of complainant's said amended and supplemental bill. Denies that said Board of County Commissioners had no jurisdiction, power, or authority to make or adopt, pass or approve said resolution, or that said resolution was or is without authority of law or void, or that all or any of the acts done by said Board and by the officers of said county thereunder were or are void, or of no effect.

XI. Denies that said contract or agreement made, executed and delivered by said John Simpson, as Chairman of said Board, was

executed by him on behalf of said County without any lawful or valid authority, or that said agreement was or is wholly ineffectual or void or made without lawful authority or jurisdiction in the premises.

XII. Denies that said deed made by the said James A. Nesbitt, as treasurer, to said San Pedro, Los Angeles and Salt Lake Railroad Company, was made, executed or delivered without lawful authority; that neither said Board of County Commissioners or the said James A. Nesbitt had any power, jurisdiction, or authority to make said deed, or to make, execute, and deliver the same, or that said deed was or is wholly void. Denies that the entry and recording of said
5214 deed upon the records of said Lincoln County, Nevada, tends to or does cast a cloud upon the title of complainant to any property or premises of the complainant in said county or State.

XIII. Denies that the right, title, estate, and interest which said San Pedro, Los Angeles, and Salt Lake Railroad Company undertook to acquire and did acquire from the County of Lincoln, and from said Nesbitt the treasurer of said County, by the deed and contract hereinbefore mentioned, arose under a certain pretended or void tax deed, whereby the said County claimed to have acquired the same title to the right of way, roadbed and certain property formerly owned by the Oregon Short Line and Utah Northern Railway Company, under or by virtue of a pretended assessment of the property of said company for taxes in the State of Nevada for the year 1893, or under a pretended judgment entered by the Clerk of the District Court of Lincoln County, Nevada, on or about the 18th day of April, 1894. Denies that said assessment was void, or ineffectual, because said property was not then subject to the taxing power of the County of Lincoln, Nevada, or for any other reason, or that the taxing officers of said County had no jurisdiction over said property, and the owners thereof, or because the title to the real estate was then in the United States, or that there was no property or improvements thereon capable of separation from the said estate, or because said property was not capable of separation from the franchise of the supposed then owner of a possessory right thereto, or because no proceedings were had either against said franchise,
5215 or to subject the franchise, or the property to the said taxing power of the State of Nevada, or for any other reason or reasons whatever.

XIV. Denies that the deed under which the County of Lincoln derived its title to said property was or is void, and in like manner denies that the deed under which the defendant San Pedro, Los Angeles and Salt Lake Railroad Company has title, was or is invalid, or void, because there was no jurisdiction in the Clerk of the District Court of Lincoln County, Nevada, nor in the District Court of Lincoln County, Nevada, to make and enter the judgment under which it is claimed a sale was made of said property, and upon which said deed was issued, or for any other reason or reasons whatever.

XV. Denies that in the action brought on or about the 17th day of January, A. D. 1894, by the District Attorney of the County of Lincoln, in the State of Nevada, in the name of the State of Nevada against the Oregon Short Line and Utah Northern Railway Company, and others as alleged in paragraph fifteen (15) of complainant's said amended and supplemental bill, a pretended summons was issued out of said Court, and under the seal thereof, but alleges that said summons was a valid summons and duly and regularly issued. Denies that said summons did not require the defendants in said action to appear and answer the complaint filed in said Court on a day certain, not less than thirty (30) nor more than forty (40) days from said date of said summons. Admits that said sheriff of Lincoln County, Nevada, on the 27th day of February, 1894,
5216 made and endorsed a return upon said summons as required by law, but denies upon information and belief that the return endorsed upon said summons, as set forth in paragraph fifteen (15) of complainant's said amended and supplemental bill, was or is the only return made by said sheriff of his acts and doings under said summons and in said proceedings. Denies upon information and belief that without any showing in said proceedings by return, affidavit, or other proof, that defendant could not after diligent search be found within said county, or without any lawful authority therefor, or without any jurisdiction in said sheriff or in said proceeding to publish the same, the notice of suit commenced, signed by the District Attorney for Lincoln County, Nevada, was published in the "Pioche Weekly Record," a newspaper printed and published weekly in said County for the time stated in said paragraph fifteen (15) of said complainant's amended and supplemental bill. Admits that a copy of the affidavit of publication made by the publisher of said newspaper, together with a copy of said notice is set out in Exhibit "B" annexed to said complainant's amended and supplemental bill and made a part thereof. Denies that the said summons and the said notice in the particulars stated in said paragraph fifteen (15) of complainant's said amended and supplemental bill were or are contradictory, or that the same were or are contradictory in any particular whatever, or that each were or are in violation of any statute of Nevada, or did not give notice as provided by law to the railway company aforesaid, and to any other claimant
5217 known or unknown, or did not warrant and authorize the entering of a default for failing to answer and a judgment thereon.

XVI. Denies that the default of the said Oregon Short Line and Utah Northern Railway Company, entered upon the records of said Court in words and figures, as set forth in paragraph sixteen (16) of complainant's said amended and supplemental bill, was or is a pretended default, but on the contrary, this defendant avers that said default and the entry thereof by the Clerk of said Court, is good and valid. Denies that the judgment entered by said Court, pursuant to said default, against said Oregon Short Line and Utah Northern

Railway Company, in words and figures as set forth in paragraph sixteen (16) of complainant's said amended and supplemental bill, was a pretended judgment, or that the same was pursuant to a pretended default, or that the same was entered in vacation and not in term time of said Court. Denies that the said Clerk was without jurisdiction and power to take, make and enter such default as against the Oregon Short Line and Utah Northern Railway Company, under the laws of the State of Nevada. Denies that said Clerk was not authorized to or had no power and jurisdiction to enter a judgment upon said complaint against said Oregon Short Line and Utah Northern Railway Company, or that the judgment entered by said Clerk was without authority or jurisdiction, or was or is void. Denies on information and belief that there was any want of jurisdiction of said Clerk to enter said judgment, or that said judgment was
5218 not signed by said Clerk of said Court, or that no legal summons was ever issued and served upon said Oregon Short Line and Utah Northern Railway Company, or that no legal notice was ever published and given as required by law, giving said Company notice of said action, or that the property described in said complaint was not subject to the taxing power of the State of Nevada and the taxing power of the taxing officers of the County of Lincoln in said State of Nevada, or that the title to the real estate was then in the United States, or that there was no propery or improvement thereon capable of separation from said estate, or that said right of way was not subject to sale under said tax proceedings, and under the execution issued under the said judgment and separate and apart from the franchise of the defendant, or that said judgment was never at any time entered up as such by the District Court of Lincoln County, Nevada, at any regular or stated, or any term thereof, or that the Court never at any time entered or made any judgment whatever upon said complaint of the State of Nevada set forth in Exhibit "A" annexed to complainant's said amended and supplemental bill, or that said judgment for any reason or reasons whatever was or is void, or of no effect. Denies that the execution issued by the Clerk of said Court on the 19th day of April, A. D. 1894, a copy of which execution is annexed to the complainant's amended and supplemental bill, marked Exhibit "B" and made a part thereof, is a pretended execution, or that the levy and sale of the property aforesaid and particularly described in said complainant's amended
5219 and supplemental bill, was a pretended levy and sale; but on the contrary, this defendant is informed and believes and so avers that the said execution is good and valid; that the same was regularly issued by said Clerk and the levy and sale thereunder by the sheriff of Lincoln County was in all respects good and valid. Denies that the levy of said execution under said judgment, was or is void, or that said property could not be seized, taken and held in execution separate and apart from the franchise or right to own same under the laws of the United States or of the State of Nevada. Denies that at the sale aforesaid, W. J. Dooly, then treasurer of said

Lincoln County, assumed to become the purchaser in trust for said Lincoln County for the sum of Five Thousand and Eighty-three and 02/100 Dollars ($5083.02), but this defendant upon information and belief and therefore alleges that said Dooly as such treasurer did in fact become the purchaser at said sale in trust for said County for the sum mentioned. That as to the allegation in paragraph sixteen (16) of complainant's said amended and supplemental bill, that no deed was ever executed or delivered to said W. J. Dooly, as such treasurer aforesaid, and that no deed was ever executed or delivered to any one until on or about the 20th day of February A. D., 1901, when the said E. D. Turner pretended to execute and deliver, as sheriff of Lincoln County, Nevada, although he was not then such officer, unto W. J. Dooly, treasurer of said County in trust for Lincoln County, although said Dooly was not then such officer, a deed of the property as aforesaid which property is particularly described in
5220 said deed as "the possessory right to surveyed right of way for railroad of sixty-five miles, more or less, running from the state line on the east southwesterly down Clover Valley Wash, then north up Meadow Valley Wash, to within three miles of Pioche, with sixty miles, more or less, of prepared roadbed, consisting of cuts, fills, tunnels, etc. etc., and known as the Milford and Pioche line of the Oregon Short Line and Utah Northern Railway Company, situate in Lincoln County, Nevada; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

This defendant avers that it has no knowledge, information or belief sufficient to form a belief, and therefore denies that no deed was ever executed or delivered to said W. J. Dooly aforesaid, and denies that no deed was ever executed or delivered to any one until on or about the 23rd day of February A. D. 1901, as alleged by said complainant in said paragraph sixteen (16) of said amended and supplemental bill.

Defendant admits that a deed was recorded on the 2nd day of March, A. D. 1901, in the office of the Recorder of Lincoln County, Nevada, as stated in paragraph sixteen (16) of complainant's amended and supplemental bill, and that a copy of said deed marked Exhibit "F" is attached to and made a part of said amended and supplemental bill.

XVII. That as to whether or not at all times during the pendency of the suit, a copy of the judgment roll whereof is
5221 made Exhibit "A" of complainant's amended and supplemental bill, and all of the proceedings thereunder, the said Oregon Short Line and Utah Northern Railway Company was not in the actual possession or use of its said property or any part thereof, nor in the exercise of its corporate functions; that all of its property of every sort and character, including its franchise to operate a railroad was sequestered and held by the court in the Ames cause in the original bill herein referred to, this defendant has not suffi-

cient information on which to base a belief, and therefore denies the same.

Defendant admits that by virtue of the contract and deed aforesaid, it has the right to enter in and upon the premises described in said contract and deed and every part thereof, and admits that it claims to own, and does own the same; but denies that it claims a right to enter upon any right of way of the complainant derived from the United States, or to interfere with complainant's possession of any such right of way, or to interfere with the construction, maintenance and operation of complainant's railroad upon such right of way. Denies that it uses said contract or said deed as the basis of a claim against complainant's right or title to any such right of way. Denies that under said contract and deed defendant pretended to have, or claimed the right to enter upon or interfere with complainant in its use and occupancy of any right of way owned by complainant, or the use of its franchise, if it had any, in respect to the construction of its railroad on such right of way. Denies that

5222 defendant pretending to claim some other and further right and title derived by it since the commencement of this suit from its co-defendant The Utah and California Railway Company, and in violation of any rights of complainant acquired by the survey of its line, or the adoption of its route, or the filing or approval of its maps, interfere with or obstruct complainant, as in complainant's original bill herein charged and alleged.

Wherefore, this defendant having fully answered, confessed, traversed and avoided or denied all the matters in said amended bill of complaint material to be answered according to its best knowledge and belief, humbly prays this Honorable Court to enter its judgment, that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

For cross complaint and for affirmative relief, your Orator shows to the Honorable Judges of the Circuit Court of the United States, Ninth Circuit, in and for the District of Nevada:

First. That your Orator is a corporation organized and existing under and by virtue of the laws of the State of Utah; that it has complied with the laws of the State of Nevada concerning the construction, maintenance, and operation of a railroad in the State of Nevada by a railroad corporation organized under the laws of another state, and that it is now engaged in the construction of a railroad in said State of Nevada.

Second. That the complainant is a corporation organ-

5223 ized and existing under and by virtue of the laws of the State of Nevada.

Third. That your Orator has caused a duly certified copy of its Articles of Incorporation with due proof of its organization under the same, together with a certified copy of the laws of the State of Utah, under which it is organized, to be filed with the Secretary of the Interior of the United States.

Fourth. That your Orator is organized for the purpose of, and is now actively engaged, in building, acquiring, holding and operating a line of railroad from Salt Lake City, in the State of Utah, by the most direct and feasible route to the harbor of San Pedro on the shores of the Pacific Ocean in the State of California; and it is authorized by its Articles of Incorporation to carry out the purpose of its organization.

Fifth. That it has duly and regularly caused to be surveyed and located that part of its said line of railroad commencing at a point known as Clover Junction in the County of Lincoln, State of Nevada, extending thence in a southwesterly direction from the Meadow Valley Wash to the Nevada-California State line, a distance of about one hundred and seventy-five (175) miles, and has caused to be platted and duly and regularly adopted as a part of its said line of railroad that part of said line surveyed and located as aforesaid commencing at said Clover Junction and extending to within thirty (30)
miles of the Nevada-California State line, and has caused maps
5224 of the same to be filed with the Register and Receiver of the
United States Land Office at Carson City, Nevada, to be forwarded to the Honorable Secretary of the Interior for approval, in conformity with the terms and provisions of an Act of Congress of the United States, approved March 3, 1875, entitled, "An Act granting to railroads the right of way through the public lands of the United States," and the regulations and requirements of the Secretary of the Interior of the United States.

Sixth. Your Orator is informed and believes and therefore alleges that, from said Clover Junction the said line of railroad of your Orator surveyed, located, mapped, and adopted as aforesaid, extends for a distance of six and six-tenths (6.6) miles over and across lands, the title to the most of which lands has passed from the United States to private parties, and that said line for the remaining distance to the Nevada-California State line extends almost entirely over and across the public lands of the United States most of which lands are unsurveyed.

Seventh. That your Orator is informed and believes and therefore charges that previous to the survey, location and adoption of its said line of railroad from Clover Junction southwesterly to within thirty (30) miles of the said Nevada-California State line as aforesaid, that there had been no survey or location of a line of railroad along said route, or any part thereof, by said complainant. Your Orator is informed and believes and therefore charges that, on or about the 12th day of April, 1901, the complainant commenced a
pretended survey of a line of railroad from said Clover Junc-
5225 tion and pretended to make a survey and location of a line of
railroad in a southwesterly direction down said Meadow Valley Wash to the said Nevada-California State line, a distance of about one hundred and seventy-five (175) miles. Your Orator is informed and believes and therefore charges that, said pretended survey and location of a line of railroad was made by the engineers of said com-

plainant for the entire distance thereof in eleven (11) days, and that the first thirty-six (36) miles of said pretended survey through the Meadow Valley Wash, a very rough and broken country in which the location of numerous curves is necessary, was made in less than two (2) days. Your Orator is informed and believes and therefore charges that, the survey and location of a line of railroad from said Clover Junction through said Meadow Valley Wash and to said Nevada-California State line cannot be accurately and properly made, or made at all, in eleven (11) days, or in less time than thirty (30) days; and that the survey and location of the first thirty-six (36) miles of a line of railroad through said Clover Junction from the said Meadow Valley Wash cannot be accurately and properly made, or made at all, in two (2) days or in less time than ten (10) days. Your Orator further charges that it commenced the survey and location of its said line of railroad from said Clover Valley Junction on the 8th day of April, 1901, and with the exception of a period of about fifteen (15) days, prosecuted said survey and location of said line continuously and vigorously, and was unable to complete the same until the 10th day of July, 1901. Your Orator is in-
5226 formed and believes and therefore charges that, no survey or location of a line of railroad was in fact made by plaintiff from said Clover Junction to the said Nevada-California State line, or for any part of said distance, and that no stakes were set by said complainant indicating the location of a line of railroad except at intervals and many miles apart, as the engineers of said complainant drove through said country in a wagon. Your Orator is informed and believes and therefore charges that, no consecutive chaining or measurement of said line was made, or even attempted to be made, by the engineers of complainant; that none of the curves, of which there are a great number, shown on the maps of complainant filed in the Land Office of the United States by complainant, as alleged in complainant's amended and supplemental bill herein, which maps purport to show the surveyed, located and adopted line of complainant's railroad from said Clover Junction to said Nevada-California State line, were ever worked out, or even attempted to be worked out by the engineers of complainant who were making the said pretended survey and location of a line of railroad. Your Orator is informed and believes and so charges that, the engineers of the complainant, who made said pretended survey and location of a line of railroad from said Clover Junction to the said Nevada-California State line, rode in a wagon most of the distance between said Clover Junction and the said Nevada-California State line; and your Orator is informed and believes and so charges that said engineer party in making the said pretended survey, frequently attached a surveyor's chain to the rear end of the wagon, in which they were riding, and allowed said
5227 chain to drag its full length along the road behind said wagon, and that this was the only measurement made, or attempted to be made of a line of railroad by complainant. Your Orator is informed and believes and therefore charges that, the maps filed by

the complainant in the Land Office of the United States, as alleged in complainant's original and supplemental bill of complaint herein, and purporting to show the surveyed, located and adopted line of railroad of said complainant from said Clover Junction to the Nevada-California State line, do not in fact represent or show, a line of railroad surveyed or located by complainant, as alleged in complainant's original and supplemental bill herein; but that said maps, as your Orator is informed and believes and so charges, are copies of maps of a line of railroad surveyed and located by the Oregon Short Line and Utah Northern Railway Company in 1890. Your Orator is informed and believes and so charges that, the pretended and fictitious survey and location of a line of railroad as aforesaid by the complainant, and the adoption and filing as aforesaid of the said copies of the maps of the said Oregon Short Line and Utah Northern Railway Company's survey by said complainant as aforesaid, was for the purpose of preceding your Orator in the completion of its survey and location of its said line of railroad from said Clover Junction to said Nevada-California State line, and for the purpose of preceding your Orator in the adoption of its said line, and the preparation of maps of your Orator's said line, and the filing said maps in the Land Office of the United States for approval by the Secretary of the Interior.

5228 Eighth. Your Orator further shows that on the 10th day of June, 1901, it commenced at Salt Lake City, in the State of Utah, a survey and location of that part of its said line of railroad from said Salt Lake City, by the most feasible and direct route through said State of Utah and into the said State of Nevada to a point of connection with its said line of railroad surveyed, located, and mapped and adopted as aforesaid in said State of Nevada; and that it has continued such survey and location in a southwesterly direction from said Salt Lake City through the County of Salt Lake and into the County of Tooele in said State of Utah, and now has about eighty (80) miles of said line of railroad in said counties surveyed; and your Orator further shows that the survey and location of said last mentioned line will be actively continued until the same is connected with the said located line of your Orator in said Lincoln County, State of Nevada.

Ninth. Your orator further alleges that immediately after the survey and location of its said line of railroad from Clover Junction to said Nevada-California State line, your Orator took possession of and occupied the line so surveyed, located, and afterwards adopted as aforesaid, and on the 6th day of May, 1901, commenced at said Clover Valley Junction, the work of constructing its railroad grade and roadbed upon and along said line, and that at the time of so occupying its said line of railroad, and the commencement of its said construction work thereon, your Orator is informed and believes and therefore charges that no part of said line was occupied by, or in possession of said complainant.

5229 Your Orator further avers that afterwards, to-wit, the 14th day of May, 1901, your Orator commenced the construction

of its roadbed on its said surveyed, located and adopted line at a point about twenty-six (26) miles southwesterly from said Clover Junction, and on the 23rd day of May, 1901, your Orator entered into a contract with Deal Bros. & Mendenhall, Railroad Contractors, for the construction and completion of its roadbed along its said surveyed, located and adopted line for a distance of sixty (60) miles, commencing at said Clover Junction; that the work of construction of said roadbed is now being carried on and vigorously prosecuted with a large force of men and horses at several places along the first twenty-six (26) miles of said line; that there is about three and one-half (3½) miles of said roadbed now in course of construction, of which about one and one-half (1½) miles has been completed, and there was expended on said work by your Orator to August 1st, 1901, the sum of twenty-three thousand seven hundred and sixty-three and 76/100 ($23,763.76) dollars. Your Orator further shows that it will cause to be completed in its entirety as fast as practicable the said sixty (60) miles of roadbed, for the construction and completion of which it has entered into a contract as aforesaid. Your Orator further charges that it intends to and will at an early date, and as soon as practicable commence the construction of its railroad grade and roadbed along and upon its said surveyed and located line in the State of Utah commencing at Salt Lake City in said State,
5230 and that your Orator intends to and will as soon as its said entire line of railroad is surveyed, located and adopted let contracts for the construction of its railroad and roadbed along and upon the whole of said line. Your Orator further shows that the principal part of the work of constructing its said railroad grade and roadbed from Clover Junction southwesterly is being done and along and upon its said surveyed, located and adopted line where the same crosses over and is upon the unsurveyed public lands of the United States.

Tenth. Your Orator further shows that in addition to the work of surveying and locating its line of railroad in the States of Utah and Nevada, and the constructing of its roadbed thereon as aforesaid, your Orator has two (2) complete surveying corps in the field in the State of California engaged in surveying and locating the line of railroad between the City of Los Angeles in the State of California and the Nevada-California State line to connect with your Orator's line of railroad surveyed and located from said Clover Junction to said Nevada-California State line and adopted as aforesaid, which your Orator is authorized by its Articles of Incorporation to acquire, construct, own and operate; that one hundred and ten (110) miles of said line extending from the said City of Los Angeles easterly towards the said Nevada-California State line has been surveyed, and about ninety (90) miles thereof definitely located and adopted. Your Orator further shows that it is now engaged in making the plans and specifications for the construction of said line of
5231 road; that it already has acquired and has in operation that part of its railroad from said San Pedro Harbor to the said City of Los Angeles, which railroad is about twenty-seven (27) miles

in length, and in addition thereto has acquired and now has in operation a terminal system of railroads in said City of Los Angeles and extending into the surrounding country consisting of three (3) branch lines of standard gauge railroad aggregating in all about fifty (50) miles of track.

Your Orator further shows that since your Orator was organized March 21, 1901, there has been expended in carrying out the purpose for which it was organized more than five hundred thousand ($500,000) dollars in cash, in addition to the amount expended in acquiring the said line of railroad between San Pedro Harbor and the City of Los Angeles and the said terminal system of railroads in said City. Your Orator further shows that it has purchased a sufficient quantity of seventy-five (75) pound steel rails to lay the first sixty (60) miles of its track, and has contracted to purchase and have delivered to it about three hundred thousand (300,000) ties, a large number of which ties have already been delivered, and are now ready to be used, and some of them have been used in the construction of your Orator's said railroad. Your Orator further shows that it is re-building its said railroad between said San Pedro Harbor and the said City of Los Angeles and has in the course of prosecuting said work re-ballasted about twenty-two (22) miles of said line, and has laid thereon for almost the entire distance a new track
5232 composed of seventy-five (75-lb.) pound steel rails and new ties, and is now carrying on with all convenient dispatch said work of rebuilding. Your Orator further shows that it has secured and purchased from private owners nearly all of the right of way for the first sixty (60) miles of its line of railroad easterly from the said City of Los Angeles, and is now engaged in securing the remainder of said right of way as fast as practicable, and will continue the work of securing the same, and that when the entire right of way is secured contracts for the grading of said first sixty (60) miles of said line will at once be let by your Orator, and as fast as said grade and railroad bed is completed your Orator will lay its railroad track thereon, consisting of new ties and new seventy-five (75) pound steel rails. Your Orator further shows that in addition to a large number of engines, passenger coaches and freight cars purchased by your Orator from the Los Angeles Terminus Railway, your Orator has also purchased fifty (50) ballast cars, one (1) steam shovel and unloader, and several hundred flat and box cars, and is engaged in placing, almost daily, orders for the necessary material and equipment for the construction and operation of its said railroad. Your Orator further shows that it has actually begun the work of constructing its railroad between the City of Los Angeles and said Salt Lake City, and proposes the continuing of the constructing of the same with all convenient dispatch as fast as said line is located and adopted, and the necessary right of way secured until said
5233 entire line between the cities shall be completed.

Eleventh. Your Orator further shows that on the 29th day of July, 1901, at said Clover Junction the complainant having completed laying its track along and upon the grade and roadbed con-

structed, as your Orator is informed and believes and so charges, in 1890, by the Oregon Short Line and Utah Northern Railway Company, and now owned by said County of Lincoln, entered upon with force and arms and took from the possession of your Orator, and laid its track upon a railroad grade and roadbed constructed by your Orator at said Clover Junction on lands of which your Orator was then and now is the owner and was then in the quiet, peaceable, and undisturbed possession. Your Orator further shows that it had the land upon which its said railroad grade and roadbed had been constructed enclosed with a substantial fence, and that its agents and servants were in the actual possession thereof. Your Orator further shows that the agents and servants of your Orator so in possession of the said lands of your Orator and of said railroad grade and roadbed made such resistance as they were able to do without causing bloodshed at the time of entry by force and arms upon said grade and roadbed of the complainant as hereinbefore stated. Your Orator further shows that claiming the right so to do, by reason of the pretended and fictitious survey made as aforesaid, by complainant, and by reason of the filing of the maps as aforesaid filed by complainant in the United States Land Office aforesaid, said complainant, its agents, servants, and employees threaten to and will, unless
5234 restrained by an order of this Court, in the same manner as the entry was made upon the roadbed and grade of your Orator at the said Clover Junction, enter upon and occupy with its tracks and exclude the defendant from the railroad grade and roadbed already constructed, and now being constructed by your Orator aforesaid, on and along said surveyed, located and adopted line of railroad on unsurveyed public lands of the United States southwesterly from said Clover Junction in said Lincoln County, and will unless restrained by an order of this Court forcibly and violently interfere with and prevent your Orator from peaceably and lawfully occupying, possessing and using the railroad grade and roadbed so constructed by it as aforesaid, and peaceably and rightfully continuing to construct its railroad grade and roadbed along its line of railroad surveyed, located and adopted aforesaid, from said Clover Junction southwesterly to the Nevada-California State line. Your Orator further shows that your Orator surveyed, located, and as your Orator is informed and believes and so charges, adopted its line of railroad over and across the said unsurveyed lands of the United States, and occupied the line of railroad so surveyed, located and adopted and began the work of constructing a railroad grade and roadbed thereon prior, as your Orator is informed and believes and so charges the fact to be, to any survey, location, or adoption by said complainant of said line, or any part thereof. Your Orator shows that the com-
5235 plainant, and its agents, servants, and employees by entering upon by force and arms the said railroad grade and roadbed constructed by your Orator on the unsurveyed public lands of the United States, and by continuing to occupy said grade and roadbed as fast as the same shall be completed by your Orator and as threat-

ened by said complainant, has caused and will cause your Orator great and irreparable damage, and injury.

Twelfth. Wherefore, your Orator, to the end that it may obtain relief to which it is justly entitled in the premises, prays this Honorable Court to grant to it your writ of subpœna directed to the said Utah, Nevada and California Railroad Company, complainant, at a time and under a certain penalty therein, requiring and commanding it to appear herein and answer, not under oath, an answer under oath being hereby expressly waived, to the several allegations in this cross bill contained.

Thirteenth. That it be required to set forth any and every adverse interest, claim, or demand in or to said surveyed line of railroad and right of way, roadbed, grade, embankments, and improvements thereon, described in the cross-bill of complainant herein, to the end that the said adverse interests, claims or demands may be justly adjudicated and declared null and void, as against this cross-complainant; and that all of the right, title, claim, and interest in and to said railroad right of way, roadbed and grade as hereinbefore mentioned and described, and shown and indicated upon the maps and plats filed in the Department of the Interior by the San Pedro, Los Angeles and Salt Lake Railroad Company, be fully,
5236 absolutely and completely settled and declared in its cross complaint, free and clear of any claim, right, title or interest of the Utah, Nevada and California Railroad Company, and that all of the pretended claim, right, title and interest of the said complainant The Utah, Nevada and California Railroad Company, in and to said right of way, roadbed, grade, embankment and improvements thereon, be found and decreed to be of no effect as against the right, title, claim and interest of this cross complainant.

Fourteenth. That the said complainant The Utah, Nevada and California Railroad Company, its officers, servants, agents, and employees, and each and every of them, may be forever enjoined and restrained from in any way or manner entering upon said railroad right of way, roadbed and grade, and from interfering with, hindering, delaying, or impeding your cross-complainant, its agents and servants, in any way or manner whatever, in the possession and use of said railroad, right of way, roadbed and grade, and construction, maintenance, management and operation of the railroad constructed, or to be constructed thereon, by your cross complainant; and that upon the final hearing hereof, your cross complainant may be declared and found to be the absolute owner of all of said railroad right of way, roadbed, grade and improvements, and that the said complainant The Utah, Nevada and California Railroad Company, has no right, title, or interest therein, or thereto.

Fifteenth. And may your Honor also grant a writ of injunc-
5237 tion, wherein and whereby the said complainant The Utah, Nevada and California Railroad Company, and also each and every of its officers, servants, agents, and employees, shall be enjoined and restrained until the further order of this Honorable Court, from

in any manner setting up any claim of right, title, or interest in and to said roadbed, right of way, premises and property, and from in any way or manner interfering with, hindering, impeding, or delaying your cross complainant in any manner whatever in the free use and enjoyment of the said right of way, as shown upon said maps and profiles of the said right of way as filed by your Orator the San Pedro, Los Angeles and Salt Lake Railroad Company as aforesaid, and from in any manner interfering with, hindering, delaying or impeding your Orator in or about the construction, maintenance and operation of the said railroad in and upon said line and right of way.

And so your cross complainant will ever pray.

SAN PEDRO, LOS ANGELES AND
SALT LAKE RAILROAD COMPANY,
By ----------,
General Attorney for Defendant and Cross Complainant.

----------,
Solicitor for Defendant and Cross Complainant.

----------,
Of Counsel.

5238 UNITED STATES OF AMERICA,
State of Nevada, County of Ormsby, } *ss.*

C. O. Whittemore, being duly sworn, deposes and says: That he is an officer, to-wit, Assistant Secretary of the San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation, the defendant and cross complainant herein, and makes this verification upon its behalf. He further says, that the foregoing answer and cross bill of complaint has been read by him, and that he knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated and alleged on information or belief, and as to those matters he believes it to be true.

----------.

Subscribed and sworn to before me this 9th day of August, 1901.

----------,
Clerk.

Complainant's Exhibit 172 is as follows:

5239 COMPLAINANT'S EXHIBIT 172. (Whittemore.)

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF NEVADA.

Utah, Nevada & California Railroad Company, Complainant,
vs.
The Utah & California Railway Company, The Empire Construction Company, The San Pedro, Los Angeles & Salt Lake Railroad Company; C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly and H. B. Maxson, Defendants.

AMENDED AND SUPPLEMENTAL BILL FOR INJUNCTION AND RELIEF, FILED HEREIN BY LEAVE OF COURT.

To the Honorable the Judges of the Circuit Court of the United States within and for the District of Nevada:

Humbly complaining, your orator shows unto your Honors, that your orator, the Utah, Nevada and California Railroad Company, a corporation existing under and by virtue of the laws of the State of Nevada, did on or about the 27th day of April, A. D. 1901,
5240 exhibit its bill of complaint unto this Honorable court against the defendants, The Utah and California Railway Company, the Empire Construction Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly and H. B. Maxson, praying for the process of subpoena against the above-named defendants; that the title of your orator in and to a certain railroad right of way, roadbed and grade be settled, and all claim of right, title or interest of The Utah & California Railway Company and of the San Pedro, Los Angeles & Salt Lake Railroad Company and the Empire Construction Company, and each and every one of them, be quieted in your orator, and that said defendants might be enjoined and restrained from entering upon your orator's railroad right of way and from interfering, hindering, delaying or impeding your orator in the work of construction of its railroad thereon, and otherwise as in said bill specifically alleged, and for other relief.

And your orator further shows, that the writ of subpoena has been issued as prayed in said bill and served upon the defendants, and further that a certain preliminary injunction, made pursuant to an order of said Court entered in the above suit on the 27th day of April, 1901, has been duly issued and served upon said defendants, and each of them, and that in the above entitled suit said defendants, The Utah & California Railway Company, the Empire Construction Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam
5241 Paul, Virgil Kelly and H. B. Maxson have made appearance, and that the above named defendants, The Utah & California Railway Company and the San Pedro, Los Angeles and Salt Lake Railroad Company have filed answer to the said original bill.

And your orator further shows, that it hath obtained leave to file herein its amended and supplemental bill, and that thereupon your orator now alleges:

1. That since the filing of its said original bill, your orator is informed and believes, and upon such information and belief alleges and charges, that the said defendant, The Utah & California Railway Company has made some sort of a contract, arrangement or agreement whereby it has agreed to convey or has made some sort of a conveyance whereby it pretends or purports to convey to the San Pedro, Los Angeles & Salt Lake Railroad Company some right, title, estate or interest in or to the said railroad right of way, grade, road-

bed and improvements thereon, acquired by your orator from the United States under and by virtue of its adoption of its route, construction of its road, the filing of maps and profiles of its road in the proper land offices of the United States and with the Department of the Interior of the United States, and by the approval of said maps by the Secretary of the Interior, and by its compliance with the Act of Congress of the United States of March 3, 1875, entitled, "An Act granting to railroads the right of way across the public lands of the United States," and with the rules and regulations of the Department of the Interior of the United States made in respect
5242 thereto; and that said San Pedro, Los Angeles and Salt Lake Railroad Company now claims or pretends to claim, under some such conveyance, the right, title and interest formerly and at the time of the filing of your orator's original bill herein, claimed by or for the said Utah and California Railway Company.

2. Your orator further alleges that, in and by such original bill it was alleged and stated, in paragraph 13 thereof that the maps and profiles of your orator's adopted line of railroad were approved by the Secretary of the Interior on the 25th day of April, 1901, and your orator prays leave to amend and does amend said allegation by showing that said maps were approved by said Secretary of the Interior upon the 24th day of April, 1901.

3. Your orator further avers, that since the filing of its said original bill and on May 3rd, 1901, it also filed in the proper land offices of the United States, maps and profiles of its branch line of railroad extending from Clover Valley Junction to or near to the town of Pioche in the State of Nevada, (over and across the surveyed lands of the United States,) and that said maps so filed were by the Secretary of the Interior duly approved on the ---- day of ------ 1901.

4. Your orator further shows and alleges, that since the commencement of this suit it also caused surveys to be made of its line of location of its railroad and caused maps and profiles to be prepared showing the line of right of way for its railroad from Clover Valley Junction southwesterly across the State of Nevada to the western
5243 boundary thereof, and that it caused to be filed in the proper land offices of the United States its said maps and profiles of its said line of right of way for its railroad across the public lands of the United States from Clover Valley Junction aforesaid, southwesterly across the State of Nevada and through the County of Lincoln, Nevada, to the western boundary of said State of Nevada, and that its said maps and profiles of the route and line of its said right of way were submitted to the Secretary of the Interior and by said Secretary of the Interior on the ---- day of ------ 1901, duly approved; all in pursuance to and in compliance with the terms of the statute of the United States hereinabove referred to.

5. Your orator further shows, that it has duly adopted the line of right of way described upon and embraced in said maps and profiles as the line of right of way for its said railroad, and that it owns and holds the same under and by virtue of the said Act of Congress, the

compliance of your orator therewith and with the rules and regulations of the Department of the Interior made in respect thereto.

6. Your orator further alleges, that since the filing of its said original bill, it hath continuously prosecuted the work of construction of its said railroad upon the line of railroad right of way indicated and shown in its said approved maps and under the right and title thereto conferred upon it by the United States and under the Act of Congress of the United States aforesaid, and now has in operation twenty-three (23) miles of railroad in and upon its said main line of
5244 right of way from the Utah-Nevada state line in the direction of and towards Clover Valley Junction aforesaid, and that it hath procured and has on hand a very large amount of track material and is actively, continuously and earnestly prosecuting its work of preparing its railroad right of way and roadbed and construction upon the main line of its said railroad right of way through Clover Valley Junction and towards the western boundary of said State of Nevada, and intends and expects, diligently and in due course of work and as rapidly as practicable, to lay down and construct the whole line of railroad, including the railroad upon its branch line towards Pioche.

7. Your orator further alleges and shows, that since the commencement of this suit and since the survey by your orator of its said main line from Utah-Nevada state-line near the town of Uvada southwesterly past Clover Valley Junction to the Nevada-California state-line and since the making and filing of its said maps, hereinbefore referred to, the said San Pedro, Los Angeles and Salt Lake Railroad Company and its agents and servants have entered upon your orator's said adopted, mapped and approved line of right of way for the alleged purpose of locating and constructing thereon a railroad, but your orator avers that such entry upon said premises and property of your orator is unlawful, and wholly without right; and your orator alleges that on or about the 14th day of May, 1901, it served upon C. D. Moore, an agent and servant of said San Pedro, Los Angeles and Salt Lake Railroad Company, a notice as follows:

5245 "SALT LAKE CITY, UTAH, *May 10, 1901.*

To Col. C. D. MOORE:

In charge of grading parties for San Pedro, Los Angeles & Salt Lake Railroad Company, or Utah & California Railroad Company:

You are hereby notified that you are encroaching upon the located and adopted right of way of the Utah, Nevada & California Railway Company at a point about four miles below Dutch Flat, and again at a point about four and one-half miles above Bradshaws, and you are forbidden to prosecute work within the limits of said right of way at said place, or any other place, and I notify you that you will not be permitted to occupy any portion of said right of way.

W. H. BANCROFT,
President, Utah, Nevada & California Ry. Co."

and that on or about the 16th day of May, 1901, it served upon said San Pedro, Los Angeles & Salt Lake Railroad Company and upon C. O. Whittemore its Attorney and a member of its Board of Directors, and a defendant herein, a notice as follows:

"SALT LAKE CITY, UTAH, *May 10, 1901.*

To the San Pedro, Los Angeles & Salt Lake Railroad Company, Utah and California Railroad Company, and Mr. C. O. Whittemore, their Attorney:

You are hereby notified that the Utah, Nevada and California Railroad Company has made a survey of its definite line of
5246 location and adopted the same, from Clover Valley Junction down the Meadow Valley Wash, and, as indicated by its maps, to the boundary line between Nevada and California, and that its maps of such location have been filed in the U. S. Land Office at Carson City, Nevada, and you are hereby notified to desist from encroaching upon said right of way or any portion of it as shown by said maps, or from constructing any grade within the limits of said right of way; and you are further notified and warned that you will not be permitted to occupy any portion of said right of way.

Yours truly,

W. H. BANCROFT,
President, Utah Nevada & California Ry. Co."

but that notwithstanding the rights of your orator and the notices aforesaid, the said defendants are continuing at divers places along said line to enter upon and to interfere with your orator's possession of its said line of right of way, in defiance of your orator's rights, against its protests and without lawful or other or any authority whatever. And your orator specifies the particulars of such wrongful and unauthorized entry upon its said right of way and premises, so far as such has come to its knowledge, as follows:

The San Pedro, Los Angeles & Salt Lake Railroad Company and its co-defendants herein, their engineers, agents, servants and employees, have entered upon the said right of way at a point about three miles from said Clover Valley Junction and at a point
5247 upon the right of way of the main line of railroad of your orator, distant about forty-three (43) miles southwesterly from the said place known as Uvada, upon the eastern boundary of said State of Nevada, and with a force of men are there constructing a grade for a short distance; that said defendants are also at another point, distant about thirty miles from the place last aforesaid and about seventy-three miles from Uvada, and within said right of way of your orator hereinbefore described, with another force of men and teams, and have entered upon said right of way and are pretending to construct a railroad grade at said last named point; that said work is not continuous or contiguous, or being pursued with a bona fide intent of continuously constructing a railroad, but that on the contrary said entries at said points are at places remote from each

other and supposed and claimed by the said defendants, their engineers, officers, agents and servants, to be points of supposed advantage and strategic in their nature, and your orator avers that said entry and intrusion upon said right of way at said places is not in good faith for the purpose and intention of constructing a railroad but is for the purpose of obstructing your orator in the peaceable prosecution of the construction of its railroad.

Your orator further avers that it is informed and believes, and upon such information and belief alleges and charges, that said defendants, their engineers, agents and servants, are threatening at other points and places, to your orator unknown, along the line of railroad right of way to enter thereon and to otherwise thereby
5248 obstruct and impede your orator in the prosecution of its said work and to defeat it of the peaceable and quiet possession and use of its property.

8. Your orator further alleges, that on or about the sixth day of May, 1901, said San Pedro, Los Angeles & Salt Lake Railroad Company took and received from one James A. Nesbitt as Treasurer of the County of Lincoln in the State of Nevada, a certain pretended deed of conveyance which purported and pretended to convey from the said James A. Nesbitt as Treasurer of said County of Lincoln, in the State of Nevada to said San Pedro, Los Angeles & Salt Lake Railroad Company, for an expressed consideration of two thousand dollars the following described property:

"The roadbed and right of way extending from a point three miles north of Pioche, to Clover Valley Junction, built and formerly owned by the Oregon Short Line and Utah Northern Railroad company, and sold for taxes and purchased and now owned by said County of Lincoln. To have and to hold the said property and improvements with the appurtenances unto the said party of the second part, its successors and assigns forever, as fully and absolutely as the said County Treaurer may, can and ought to by virtue of the statute and said order in such cases made and provided."

9. Your orator alleges that said pretended deed or conveyance to said San Pedro, Los Angeles & Salt Lake Railroad Company was made, executed and delivered to said Company and recorded in
5249 the records of Lincoln County, Nevada, on or about the sixth day of May, 1901, and after the commencement of this suit; and your orator further alleges and charges that prior to the making, execution and delivery of said pretended deed and on the said sixth day of May, 1901, said San Pedro, Los Angeles & Salt Lake Railroad Company made and entered into a certain pretended agreement to and with one John Simpson, Chairman of the Board of County Commissioners of Lincoln County, Nevada, claiming that said agreement was in fact made with Lincoln County, Nevada, in words and figures following to-wit:

"It is mutually agreed between the undersigned that check No. 183 for the sum of $3083.02 drawn by the San Pedro, Los Angeles and Salt Lake Railroad Company to James A. Nesbitt, Treasurer of

Lincoln County, hereto attached, shall be held by said treasurer until the determination of the suit pending in the District Court of the Fourth Judicial District of Nevada, wherein the Utah, Nevada and California Railroad Company is plaintiff, and John Simpson et al., Commissioners, are defendants, and in the event of the County's title to the old Oregon Short Line and Utah Northern Railway Company grade and right of way in Lincoln County being adjudged valid but that the sale thereof must be made at public auction, the said check and the amount mentioned therein shall be taken as a part of the sum $5083.02 to be bid by San Pedro, Los Angeles and Salt Lake Railroad Company for said right of way and grade at the time the same shall be advertised for sale by said County. The said $2000.00 already paid to said County for a portion of said right of way shall
5250 constitute the balance of the amount to be bid by said San Pedro, Los Angeles and Salt Lake Railroad Company as aforesaid, provided that said last named Company become the purchasers of said property, and in case the said title of said County shall be held invalid, or that the San Pedro, Los Angeles and Salt Lake Railroad Company does not become the purchaser of said grade, the said check shall be returned to the said San Pedro, Los Angeles and Salt Lake Railroad Company.

It is further agreed that in the event said title is held to be valid and that the same may be disposed of at private sale, then the said check shall be taken as the balance of the purchase price for the right of way from Clover Valley Junction to Uvada, and a conveyance thereof shall be made to said San Pedro, Los Angeles and Salt Lake Railroad Company, provided, it is determined by the Board of County Commissioners to sell said property at private sale.

JOHN SIMPSON,
Chairman Board of County Commissioners, Lincoln County.

C. O. WHITTEMORE,
General Attorney S. P. L. A. and S. L. R. R. Co."

10. Your orator further alleges and charges, that upon the sixth day of May, 1901, after the commencement of this suit, the said San Pedro, Los Angeles and Salt Lake Railroad Company appeared before the Board of County Commissioners of Lincoln County, Nevada, and caused and procured said Board to make and adopt a certain resolution in words and figures following, to-wit:

"C. O. Whittemore, Attorney for the San Pedro, Los Angeles and Salt Lake Railroad Company, appeared before the
5251 Board and stated that said Company contemplated the construction of a line of railroad from Salt Lake City, Utah, to San Pedro Harbor in the State of California by the most feasible and practical route, and desired to use the grade and right of way formerly built and occupied by the Oregon Short Line and Utah Northern Ry. Co. and now owned by Lincoln County, from a point opposite Pioche to Clover Valley Junction in said County, and for

and on behalf of said first named railroad company asked the Board to fix a price for which it would grant and convey all its rights, titles and interests in said grade and right of way to said company.

After due consideration by the Board two thousand dollars was agreed upon, for which such grant and conveyance would be made.

Now, therefore, in consideration of the payment to said County of the sum of two thousand dollars, the receipt of which is hereby acknowledged, there is hereby granted and quit-claimed to the San Pedro, Los Angeles and Salt Lake Railroad Company, its successors and assigns, all the right, title and interest of said County in and to said grade and right of way, which is more particularly described as follows:

That certain railroad right of way and grade commencing on the east boundary of sec. 12, T. 1, R. 67 E., M. D. B. M., and extending thence in a southerly direction down Condor Canyon and Meadow Valley Wash a distance of thirty-five miles to a point in Section 8, T. 4 S., R. 67 E., M. D. M. known as the 115 mile post of the Oregon Short Line and Utah Northern Railway Company
5252 survey—and the County Treasurer of said County is hereby authorized and directed to make, execute and deliver to the said S. P. L. A. and S. L. R. R. Co., a quit claim deed, conveying to said Company, its successors and assigns, all the right, title and interest and claim of Lincoln County to said property.

On motion of E. D. Turner, it was moved and seconded that the above resolution be adopted. John Simpson voting yes, E. D. Turner voting yes, and Henry Mathews voting yes."

And your orator further alleges and charges the truth to be, that said Board of County Commissoners had no jurisdiction, power or authority to make or adopt, pass or approve said resolution so procured to be adopted, passed and approved by them, and that said resolution was and is without authority of law and wholly void, and that all acts done or attempted to be done by said Board or any officer of said County thereunder were and are void and of no effect.

11. That said pretended contract or agreement, hereinbefore recited, was made, executed and delivered by said John Simpson as Chairman of said Board and was executed by him on behalf of said County or by himself without any lawful or valid authority, and that said agreement and contract was and is wholly ineffectual and void and made without any lawful authority or jurisdiction in the premises.

12. That said deed made by said James Nesbitt as Treasurer, to the said San Pedro, Los Angeles and Salt Lake Railroad Company, was made, executed and delivered without lawful authority:
5253 that neither the said Board of County Commissioners nor yet the said James A. Nesbitt had any power, jurisdiction or authority to make said deed or to make, execute, issue or deliver the same, and that said deed was and is wholly void, and yet the entry and recording of said deed upon the records of Lincoln County, Nevada, tends to and does cast a cloud upon the title of your orator to its premises and property aforesaid.

13. Your orator further alleges and shows that the pretended right, title, claim or interest which the said San Pedro, Los Angeles and Salt Lake Railroad Company so as aforesaid undertook to acquire from the County of Lincoln or from said Nesbitt, the Treasurer thereof, by the deed and contract hereinbefore mentioned, arise under a certain pretended but void tax deed, whereby the said County claimed to have acquired some title to the right of way, roadbed and certain property formerly owned by the Oregon Short Line and Utah Northern Railway Company under and by virtue of a pretended assessment of the properties of said Company for taxes in the State of Nevada for the year 1893, and under a pretended judgment entered by the Clerk of the District Court of Lincoln County, Nevada, on or about the 19th day of April, 1894; but your orator charges and alleges the truth to be, that said pretended assessment was wholly void and ineffectual because said property was not then subject to the taxing powers of the County of Lincoln, Nevada, and that the taxing officers of said County had no jurisdiction over said property or the owner thereof; and because the legal title to the real estate
5254 was then in the United States and there was no property or improvement thereon capable of separation from the said estate, and because said property was not capable of separation from the franchise of the supposed then owner of a possessory right thereto, and because no proceedings were had either against said franchise or to subject the franchise and the property to the said taxing power of the State of Nevada.

14. And your orator further shows and alleges that said pretended deed under which the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company, as your orator is informed and believes, now claims and charges the Treasurer of Lincoln County, Nevada, had title, was and is wholly invalid and void, because there was no jurisdiction in the Clerk of the District Court of Lincoln County, Nevada, nor yet in the District Court of Lincoln County, Nevada, to make or enter the judgment under which it is claimed a sale was made of said property and upon which said deed was issued as will fully appear by reference to the judgment roll in said proceeding, a certified copy whereof is hereto annexed, marked "Exhibit A" and especially made a part of this amended and supplemental bill.

15. And your orator further shows that on or about the 17th day of January A. D. 1894, William Culverwell, the District Attorney of the County of Lincoln, in the State of Nevada, brought a certain action in the name of the State of Nevada against the Oregon Short Line and Utah Northern Railway Company and the owners and claimants, known and unknown, of the property in question
5255 which was described in the complaint in said action as follows:

"Possessory claim to surveyed right of way for railroad of sixty miles more or less, running from the state-line on the east, southwest down Clover Valley Wash thence north up Meadow Valley Wash to within three miles of Pioche, with sixty miles more or less, of prepared roadbed, consisting of cuts, fills, tunnels, &c. and known

as the Milford and Pioche line of the Oregon Short Line and Utah Northern Railway, situate in Lincoln County, Nevada."

in which action the plaintiff therein prayed "judgment against Oregon Short Line and Utah Northern Railway Company for the sum of three thousand five hundred and fifty dollars and eighty-eight cents ($3550.88), the whole of said tax, and a separate judgment against said real estate and improvements, for the sum of three thousand five hundred and fifty dollars and eighty-eight cents (the tax due on real estate improvements and personal property) and the ten percent damages for non-payment thereof at the time as required by law, and the additional penalty of twenty-five per centum also required by law, and for such other judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes and of this action;" and thereupon on said day in said action a pretended summons was issued out of said Court under the seal thereof: a copy of said complaint in full and of said summons, together with the return of the service thereon, being marked "Exhibits B and C," respectively in said Exhibit A hereunto annexed and made a part of this amended and supplemental bill.

5256 Plaintiff alleges that the said pretended summons did not require the defendant and all owners of or claimants to any real estate or improvements described in said summons, known or unknown, to appear and answer the complaint filed in said Court on a day certain, not less than thirty nor more than forty days from the date of the summons, but by the command of said pretended summons, addressed to "Oregon Short Line and Utah Northern Railway Co., and all owners of or claimants known or unknown," said defendants were "required to appear in an action commenced against you as defendants by State of Nevada as plaintiff, in the District Court of the State of Nevada, Lincoln County, at the Town of Pioche, and answer the complaint therein, which is on file with the Clerk of said Court, within forty days after the service on you of this summons, (exclusive of the day of service) if served in said County, or forty days if served out of said County but within this District, and in all other cases forty days; or judgment will be taken against you by default, according to the prayer of said complaint."

The said Sheriff of Lincoln County, Nevada, on the 27th day of February, 1894, made and endorsed a return upon said summons in words and figures following:

"Office of the Sheriff,
State of Nevada, *Lincoln County.*

I hereby certify that I received the within summons on the 17th day of January, A. D. 1894, and personally served the same on the 17th day of January, A. D. 1894, by posting a certified copy of one summons on the bulletin board at the Court House at Pioche, Lincoln County, and a certified copy also on the grade of railroad

5257 running between Bullionville and Panaca.

February 27th, A. D. 1894.

E. D. Turner, *Sheriff.*"

and that said return was and is the only return made by the Sheriff of his acts and doings under said summons or in said proceeding.

That without any showing in said proceeding, by return, affidavit or other proof, that the defendant could not, after diligent search, be found within said County, and without any lawful authority therefor and without any jurisdiction in said Sheriff or in said proceeding to publish the same, a certain pretended notice of suit commenced signed by the District Attorney of Lincoln County, Nevada, was published in the "Pioche Weekly Record," a newspaper printed and published weekly in said County, for a term of three weeks commencing on the 18th day of January, A. D. 1894, and ending on the 8th day of February A. D. 1894, as appears by a copy of the affidavit of publication made by the publisher of said newspaper, together with a true copy of said notice, which is set out in "Exhibit D" annexed hereto and made a part of this amended and supplemental bill.

That, although the statute then in force providing for the publication of the notice aforesaid, required that said notice should state a day certain therein, with notice to the defendant that unless they appeared and answered the complaint on or before such day, so stated, judgment would be taken against them, and that such return day should be not less than thirty nor more than forty days from
5258 the date of the issuing of said summons, the return day fixed in the notice aforesaid was the 27th day of February A. D. 1894, being more than forty days from the day of the issuing of summons, to-wit: forty-one days, and that although the said statute required said notice to set forth that the said action was to recover the tax and delinquency assessed to the said defendant against said property for the fiscal year, naming the same, for which said tax was assessed, and although the constitution of the State of Nevada provided that the fiscal year should begin on the first day of January of each year, the said notice contained the statement that the said suit was brought to recover the tax and delinquency assessed to said defendant against said property "for the fiscal year commencing first Monday in January A. D. 1893, and ending second Monday in September A. D. 1893," and that in the particulars aforesaid, the said summons and the said notice, were and are contradictory, and each were and are in violation of the statute, and did not give notice, as provided by law, to the Railway Company aforesaid, or any other claimant, known or unknown, and did not warrant or authorize the entering of a default for failure to answer or any judgment thereon.

16. That notwithstanding the premises, thereafter on the 19th day of April, A. D. 1894, the then Clerk of said District Court of Lincoln County, Nevada, pretended to enter a default of said Oregon Short Line & Utah Northern Railway Company, and entered a pretended default upon the records of said Court in words and figures following:

5259 "IN THE DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LINCOLN.

The State of Nevada, Plaintiff,

vs.

Oregon Short Line and Utah Northern Railway Company, and all owners of or claimants known or unknown, and the real estate possessory claimants and improvements in the County of Lincoln and State of Nevada and described as follows, to-wit:

Possessory claim to surveyed right of way for railroad of 65 miles more or less, running from the state line on the east, southwest down Clover Valley Wash, thence north up Meadow Valley Wash to within three miles of Pioche, with 60 miles more or less of prepared roadbed, consisting of cuts, fills, tunnels, &c. and known as the Milford and Pioche line of Oregon Short Line and Utah Northern Railway, situate in Lincoln County, Nevada.

Value of real estate		$100,000.00
Value of personal property		25.00
Total value		$100,025.00
State tax	$900.22	
County tax	2650.66	
Total tax	$3550.88	

Defendants.

The summons in this action having been duly served upon the defendants Oregon Short Line and Utah Northern Railway Company, and all owners of or claimants known or unknown, and the real estate and improvements in the County of Lincoln aforesaid, on the 17th day of January, A. D. 1894, by po-sting a certified copy of one summons on the bulletin board at the Court House at Pioche, Lincoln County, and a certified copy also on the grade of railroad running between Bullionville and Panaca, by the Sheriff of said
5260 County, and notice of the commencement of said suit having been duly published, and the legal delay for answering of said defendants having expired, and no answer, plea, demurrer or appearance in said action having been put in or filed with the Clerk of this Court by the said defendants, the default of the said defendants is hereby entered upon the application of the plaintiff.

Witness my hand and seal of said Court this 19th day of April, A. D. 1894.

J. A. CLARK, *Clerk.*

(NOTE.—No seal attached.)

Endorsed: In the District Court, State of Nevada, Lincoln County. The State of Nevada *vs.* Oregon Short Line and Utah Northern Railway Company. Default. Filed April 19th, 1894. J. A. Clark, Clerk."

And thereafter on the same day and in vacation and not in term time of said Court, the said Clerk, without jurisdiction, entered a

certain pretended judgment, in pursuance to said pretended default, against said Oregon Short Line and Utah Northern Railway Company in the following words and figures:

"IN THE DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF LINCOLN.

The State of Nevada, Plaintiff,

vs.

Oregon Short Line and Utah Northern Railway Company, and all owners of or claimants known or unknown and the real estate possessory claimants and improvements in the County of Lincoln and State of Nevada, and described as follows, to-wit:

Possessory claim to surveyed right of way for railroad of 65 miles more or less, running from the State line on the east,
5261 southwest down Clover Valley Wash, thence north up Meadow Valley Wash to within three miles of Pioche; with 60 miles more or less of prepared roadbed consisting of cuts, fills, tunnels &c. and known as the Milford and Pioche line of Oregon Short Line and Utah Northern Railway, situated in Lincoln County, Nevada.

Value of Real Estate		$100,000.00
Value of personal property		25.00
		$100,025.00
State tax	$900.22	
County tax	$2650.66	
	$3550.88	

Defendants.

In this action the defendants Oregon Short Line and Utah Northern Railway Company, and all owners of or claimants known or unknown having been regularly served with process and having failed to appear and answer the plaintiff's complaint filed herein, the legal time for answering having expired, and no answer or demurrer having been filed, the default of the said defendants in the premises having been duly entered according to law; upon application of said plaintiff to the Clerk, judgment is hereby entered against said defendants in pursuance to the prayer of said complaint.

Wherefore by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged and decreed, that the plaintiff do have and recover from the said defendants the sum of forty seven hundred and ninety-three dollars and sixty-eight cents ($4793 dollars and 68/100) with interest thereon at the rate of three percent per month from the date hereof, till paid, together with said plaintiff's costs and disbursements incurred in this action amounting to the
5262 sum of two hundred and four dollars and eighty-four cents ($204.84).

Judgment rendered, $4998.52/100, April____ A. D. 1894.
Endorsed: District Court____Judicial District____County of Lincoln____State of Nevada, plaintiff vs. Oregon Short Line and Utah Northern Railway Company, Defendants____Judgment by Default. Filed April 19, 1894.

J. A. CLARK, *Clerk.*"

Plaintiff upon information and belief alleges and charges, that the said Clerk was wholly without jurisdiction or power to take, make or enter said default as against the said Oregon Short Line and Utah Northern Railway Company under the laws of the State of Nevada.

Your orator upon information and belief, charges and alleges, that said Clerk was not authorized to and had no power or jurisdiction to enter a judgment upon said complaint against said Oregon Short Line and Utah Northern Railway Company, and that the pretended judgment entered by said Clerk was wholly and entirely without authority or jurisdiction, and was and is void.

Your orator further shows to the Court, that said pretended judgment was not signed by the Clerk of said Court, and that because of the want of jurisdiction in said Clerk to enter said judgment, and because said judgment was not signed by said Clerk of said Court, and because no legal summons was ever issued or served upon the said Oregon Short Line and Utah Northern Railway Company, and because no legal notice was ever published or given as required by law, giving said Company notice of said action, and because the property described in said complaint was not subject to the taxing power of the State of Nevada or the taxing power or taxing
5263 officers of the County of Lincoln in said State of Nevada, and because the legal title to the real estate was then in the United States and there was no property or improvement thereon capable of separation from the said estate, and because said right of way was not subject to sale under said tax proceedings or under the pretended execution issued under the pretended judgment or separate and apart from the franchise of the defendant, and because said pretended judgment was never at any time entered up as such by the District Court of Lincoln County, Nevada, at any regular and stated or other term thereof, and because the Court never at any time entered or made any judgment whatever upon said complaint of the State of Nevada set forth in "Exhibit A" hereto annexed, the same was and is void and of no effect.

That notwithstanding the said Clerk of said Court, on the said 19th day of April, A. D. 1894, issued a pretended execution upon the said pretended judgment, to one E. D. Turner, then Sheriff of the said County of Lincoln, who thereupon pretended to levy upon and sell the property aforesaid and hereinafter more particularly described, as appears more fully by his return of his proceeding under said pretended execution, true copies of which said pretended execu-

tion and return are annexed hereto, marked "Exhibit C" and made a part of this amended and supplemental bill.

Your orator avers, that there was no special judgment entered for the sale of the property pretended to be assessed and described in said complaint, as prayed in said complaint; that said judg-
5264 ment was a personal judgment only, and that said pretended execution was not issued upon any special judgment against the property described in plaintiff's complaint and did not embrace any order to sell the specific property described in the complaint in said action; that said pretended levy of said general execution under said personal judgment was and is wholly void, because said property could not be seized, taken or held in execution, separate and apart from the franchise or right to own same under the laws of the United States or of this State.

That at the sale aforesaid, one W. J. Dooly, then Treasurer of said Lincoln County, assumed to become the purchaser, in trust, for said County, for the sum of five thousand and eighty-three and 02/100 Dollars ($5,083.02).

And your orator further shows to the Court, that it has no knowledge or information as to whether a certificate of sale was executed by the Sheriff aforesaid, to the said Dooly, as Treasurer aforesaid, but it avers that no deed was ever executed or delivered to said W. J. Dooly, as Treasurer aforesaid, and that no deed was ever executed or delivered to any one, until on or about the 23rd day of February A. D. 1901, when the said E. D. Turner pretended to execute and deliver, as Sheriff of Lincoln County, Nevada, although he was not then such officer, unto W. J. Dooly, Treasurer of said County, in trust for Lincoln County, although said Dooly was not then such officer, a deed of the property aforesaid, which said property is particularly described in said deed, "As the possessory right to surveyed right of way for railroad of sixty-five miles, more or less, running from the state line on the east, southwesterly down Clover
5265 Valley Wash, then north up Meadow Valley Wash, to within three miles of Pioche, with sixty miles, more or less, of prepared roadbed, consisting of cuts, fills, tunnels, etc. etc. and known as the Milford and Pioche line of the Oregon Short Line and Utah Northern Railway, situate in Lincoln County, Nevada; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining," and thereupon caused said deed to be recorded on the second day of March A. D. 1901, on pages 208-9-10-11-12 of Book T of Real Estate Deeds in the office of the Recorder of Lincoln County; a copy of which deed is annexed hereto, marked "Exhibit F" and made a part of this amended and supplemental bill.

17. That at all times during the pendency of said suit, copy of judgment roll whereof is made "Exhibit A" of this amended and supplemental bill, and all of the proceedings thereunder except the

pretended issuance of said deed in February, 1901, the said Oregon Short Line and Utah Northern Railway Company was not in the actual possession or use of its said property or any part thereof, nor in the exercise of its corporate functions, that all of its property of every sort and character including its franchise to operate a railroad, was sequestered and held by the Court in the Ames cause in the original bill herein referred to.

And your orator avers and charges that said San Pedro, Los Angeles and Salt Lake Railroad Company now claims and pretends that by virtue of said pretended contract and pretended deed, aforesaid,

it has some right to enter in or upon said premises, or some part
5266 thereof, and claims to own the same, and claims the right to enter upon the right of way of your orator derived from the United States as aforesaid, and to interfere with your orator's possession thereof, and to interfere with the construction, maintenance and operation of your orator's railroad thereon, and uses said pretended contract and the pretended deed as the basis of a claim against your orator's right and title thereto, and under said pretended contract and deed pretends to have and claim the right to enter upon and interfere with your orator in its use and occupation of its said right of way and property and the use of its franchise in respect to the construction of its railroad thereon; and the said defendant the San Pedro, Los Angeles and Salt Lake Railroad Company, pretending to claim some other and further right and title derived by it since the commencement of this suit from its co-defendant the Utah and California Railway Company, but yet without right and in violation of your orator's right acquired by the survey of its line, the adoption of its route and the filing and approval of its said maps as aforesaid, still interferes with and obstructs your orator as in your orator's original bill herein charged and alleged; and your orator, therefore, alleging and claiming all that it hath in said original bill alleged and claimed, save as hereinbefore amended, prays:

That said San Pedro, Los Angeles and Salt Lake Railroad Company be enjoined and restrained from further asserting, setting up or making any claim of right, title or interest which it pretends to

have acquired or to have under and by virtue of any contract,
5267 agreement or conveyance from the said Utah and California Railway Company, or under said pretended deed from James A. Nesbitt, Treasurer of said Lincoln County, Nevada, or, under said pretended contract made in the name of John Simpson, as Chairman of the Board of County Commissioners of said Lincoln County, Nevada, or otherwise, as to any of your orator's said right of way or property, and that each and every of said pretended deeds, contracts or agreements, instruments or conveyances, issued or delivered by either the said Utah and California Railway Company, the said James A. Nesbitt, Treasurer as aforesaid, and the said pretended contract from the County of Lincoln aforesaid, and the record of each and every of them, may be set aside and cancelled and all of

the pretended title, claim or interest of the said San Pedro, Los Angeles and Salt Lake Railroad Company pretended to be held under them or any of them, be held for naught; and that said defendants and each and every of them be further restrained and enjoined from entering upon the right of way and railroad grade, cuts, embankments, tunnels, and property, or any portion thereof, of that certain line of railroad right of way and railroad grade described and referred to in the original bill of complaint herein and in this amended and supplemental bill, and being in Lincoln County in this State and the District of Nevada, beginning at a point on the eastern boundary line of this State, at or near a point now known as Uvada and extending thence southwesterly along said grade and right of way indicated by said roadbed, cuts, embankments, tunnels, etc.,
5268 to a point called Clover Valley Junction, a distance of about forty miles, and from said Clover Valley Junction extending southwesterly through Lincoln County and across the State of Nevada, to the western boundary of said State, upon the line of railroad right of way indicated and shown upon the maps thereof by your orator filed with and approved by the Secretary of the Interior of the United States, and from said Clover Valley Junction aforesaid, extending along said right of way, grade, embankment, cuts, and fills, northerly or northwesterly a distance of thirty miles, more or less, to a point at or near the town of Pioche, in Lincoln County, Nevada; and from in any manner obstructing, hindering or interfering with the complainant, its agents, servants or employees, from proceeding peaceably and continuously with the work of constructing said railroad on and along said right of way and every part thereof.

That each of the said defendants may be required to show why your orator should not have the relief prayed for herein; and that said defendants may answer this your orator's amended and supplemental bill, as well as the said original bill, but not under oath (answer under oath being hereby expressly waived), and that your orator may have such other and further relief as the nature of its case may require.

And your orator prays that it may have the full benefit of the said original bill and of all proceedings had therein and thereunder against said defendants, and may have the same relief against said several defendants as your orator might or could have had
5269 against them under said original bill, as well as all and singular the relief sought and prayed by this your orator's supplemental bill, including under this supplemental bill the appropriate writ of injunction herein prayed.

And may it please your Honors to grant unto your orator a writ of subpoena, to be directed to the defendants, the Utah and California Railway Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, The Empire Construction Company, commanding them and each of them, at a time and under a certain penalty therein to be limited, to appear before this Honorable Court, and then

and there stand to, perform and abide such further order and direction and decree as to this Honorable Court shall seem meet.

And so your orator will ever pray:

THE UTAH, NEVADA & CALIFORNIA RAILROAD COMPANY,
By P. L. WILLIAMS,
C. A. VARIAN,
Its Solicitors.

W. R. KELLY,
TRENMOR COFFIN,
Of Counsel.

UNITED STATES OF AMERICA,
District of Utah, County of Salt Lake. } ss.

W. H. Bancroft, being duly sworn, deposes and says that he is an officer, to-wit: The President of the Utah, Nevada and California Railroad Company, the complainant herein, and makes this verification upon its behalf:

5270 He further says that the foregoing amended and supplemental bill of complaint has been read to him, and that he knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated and alleged on information and belief, and that as to those matters he believes it to be true.

W. H. BANCROFT.

Subscribed and sworn to before me this 25th day of May, 1901.

(NOTARIAL SEAL.)

CHARLES D. SAVERY,
Notary Public.

JUDGMENT ROLL "EXHIBIT A."

IN THE DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF LINCOLN.

Complaint
"Exhibit B."

The State of Nevada, Plaintiff,

vs.

Oregon Short Line and Utah Northern Railway Company and all owners of or claimants known or unknown and the real estate possessory claimants and improvements in the County of Lincoln and State of Nevada and described as follows, to-wit: Pos-

5271 sessory claim to surveyed right of way for railroad of 65 miles more or less, running from the state line on the east, southwest down Clover Valley Wash, thence north up Meadow Valley Wash, to within three miles of Pioche, with 60 miles, more or less of prepared roadbed consisting of cuts, fills, tunnels, &c. and known as the Milford and Pioche line of the Oregon Short Line and Utah Northern Railway, situated in Lincoln County, Nevada.

Value of Real Estate		$100,000.00
Value of Personal Property		25.00
Total Value		$100,025.00
State tax	$900.22	
County tax	2,650.66	
Total tax	$3,550.88	

The State of Nevada by William Culverwell, District or Prosecuting Attorney of the County of Lincoln, complains of Oregon Short Line and Utah Northern Railway Company, and all owners of or claimants known or unknown and also the real estate and improvements situate in said County of Lincoln, State of Nevada, and described as follows, to-wit: Possessory claim to surveyed right of way for railroad of 65 miles, more or less, running from the State line on the east, southwest down Clover Valley Wash, thence North up Meadow Valley Wash, to within three miles of Pioche; with 60 miles more or less of prepared roadbed consisting of cuts, fills, tunnels, &c. and known as the Milford and Pioche line of the Oregon Short Line and Utah Northern Railway, situate in Lincoln County, Nevada;

and for cause of action says that between the first Monday
5272 in January and the second Monday in September, A. D.

One thousand eight hundred and ninety-three (1893) in the County of Lincoln, in the State of Nevada, Herman E. Freudenthal then and there being County Assessor of said County, did duly assess and put down on an assessment roll all the real and personal property in said County subject to taxation and that said assessment roll was afterwards submitted to the Board of Equalization of said County and was by said Board duly equalized as provided by law. That said Oregon Short Line and Utah Northern Railway Company was then and there the owner of and that there was duly assessed to him the described real estate, improvements upon real estate and certain personal property, and that upon such property there has been duly levied for the fiscal year A. D. 1893, one thousand eight hundred and ninety-three, a state tax of nine hundred dollars and twenty-two cents ($900.22); and a county tax of two thousand six hundred and fifty dollars and sixty cents ($2,650.66/100) amounting in the whole to three thousand five hundred and fifty dollars and eighty-eight cents ($3,550.88), all of which is due and unpaid; of which thirty-five hundred and fifty dollars was duly assessed and levied against the real estate, and improvements aforesaid, and eighty-eight cents against the personal property.

Wherefore said plaintiff prays judgment against Oregon Short Line and Utah Northern Railway Company for the sum of three thousand five hundred and fifty dollars and eighty-eight cents

($3,550.88/100) (the whole of said tax) and a separate judg-
5273 ment against said real estate and improvements for the sum

of three thousand five hundred and fifty dollars and eighty-eight cents (the tax on real estate, improvements, and personal property) and the ten per cent damages for nonpayment thereof at

the time as required by law, and the additional penalty of twenty-five per centum also required by law, and for such other judgment as in justice belongs and for all costs subsequent to the assessment of said taxes and of this action.

W. CULVERWELL,
District or Prosecuting ____ County of Lincoln.

Endorsed: In the District Court of the State of Nevada, Lincoln County ____ State of Nevada *vs.* Oregon Short Line and Utah Northern Railway Company, Defendant ____ Complaint ____ Filed January 17th, 1894. J. A. Clark, Clerk____W. Culverwell, District Attorney.

SUMMONS "EXHIBIT C."

District Court Summons.

IN THE DISTRICT COURT OF THE STATE OF NEVADA, LINCOLN COUNTY.

The State of Nevada sends greeting to Oregon Short Line and Utah Northern Railway Company, and all owners of or claimants known or unknown:

5274 You are hereby required to appear in an action commenced against you as defendant by State of Nevada as plaintiff, in the District Court of the State of Nevada, Lincoln County, at the town of Pioche, and answer the complaint therein, which is on file with the Clerk of said Court within forty days after the service on you of this Summons (exclusive of the day of service) if served in said County, or forty days if served out of said County, but within this District, and in all other cases forty days; or judgment by default will be taken against you, according to the prayer of said complaint.

The said action is brought to recover judgment against you, the said defendants for the sum of thirty-five hundred and fifty 88/100 dollars, that is to say nine hundred 22/100 dollars State tax, and twenty-six hundred and fifty 66/100 dollars County tax, total amount 3550.88/100, together with ten per centum and twenty-five per centum on said sum as penalty, all in gold coin, delinquent taxes on property hereinafter described, together with percentage and costs as is provided by law as fully set forth in a complaint on file in my office the same being tax on real and possessory claim and personal property for the year A. D. 1893, described as follows, to-wit: Possessory claim to surveyed right of way for railroad of sixty-five miles, more or less, running from the State line on the east southwest down Clover Valley Wash, thence north up Meadow Valley Wash to within three miles of Pioche, with 60 miles, more or less of prepared roadbed consisting

of cuts, fills, tunnels, &c., and known as the Milford and Pioche
5275 line of the Oregon Short Line and Utah Northern Railway, situated in Lincoln County, Nevada. Value of real estate $100,000.00 Value of personal property $25.00. Total value $100,025.00.

And you are hereby notified that if you fail to appear and answer the said complaint as above required, the said Plaintiff will take judgment against you for the said amount, together with all costs,

percentages, penalties subsequent to the assessment of said taxes and of this action.

In testimony whereof, I, J. A. Clark, have hereunto set my hand, and affixed the Seal of said Court, this 17th day of January, A. D. 1894.

[SEAL]

J. A. CLARK,
County Clerk and Ex-officio Clerk of the District Court of the State of Nevada, Lincoln County.

Endorsed: In the District Court of the State of Nevada, Lincoln County. State of Nevada, plaintiff, vs. Oregon Short Line and Utah Northern Railway Company, Defendant____. Summons____W. Culverwell, District or Prosecuting Attorney for Plaintiff____Filed this 27th day of February, A. D. 1894. J. A. Clark, Clerk.

OFFICE OF THE SHERIFF,
State of Nevada, Lincoln County.

I hereby certify that I received the within Summons on the 17th day of January, A. D. 1894, and personally served the same on
5276 the 17th day of January, A. D. 1894, by posting a certified copy of one Summons on the Bulletin Board at the Court House at Pioche, Lincoln County, and a certified copy also on the grade of railroad running between Bullionville and Panaca.

E. D. TURNER, *Sheriff.*

February 27th, 1894.

IN THE DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR LINCOLN COUNTY.

The State of Nevada, Plaintiff.

vs.

Oregon Short Line and Utah Northern Railway Company and all owners of or claimants known or unknown and the Real Estate possessory claimants and improvements in the County of Lincoln and State of Nevada and described as follows to-wit: Possessory claim to surveyed right of way for railroad of 65 miles more or less running from the State line on the east southwest down Clover Valley Wash thence North up Meadow Valley Wash to within three miles of Pioche; with 60 miles, more or less of prepared roadbed consisting of cuts, fills, tunnels, &c., and known as the Milford and Pioche Line of Oregon Short Line and Utah Northern Railway situated in Lincoln County, Nevada.

Value of Real estate		$100,000.00
Value of Personal Property		25.00
		$100,025.00
State tax	$909.22	
County tax	$2,650.66	
Total tax	$3,559.88	

5277 Defendants.

In this action the defendants Oregon Short Line and Utah Northern Railway Company, and all owners of or claimants known or unknown having been regularly served with process and having failed to appear and answer the plaintiff's complaint filed herein, the legal time for answering having expired, and no answer or demurrer having been filed, the default of the said defendants in the premises having been duly entered according to law; upon application of said plaintiff to the Clerk, Judgment is hereby entered against said defendants in pursuance of the prayer of said complaint.

Wherefore by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged and decreed that the said plaintiff do have and recover from the said defendants the sum of forty-seven hundred and ninety-three dollars and sixty-eight cents ($4703 dollars 68/100) with interest thereon at the rate of three per cent per month from the date hereof, till paid, together with said plaintiff's costs and disbursements incurred in this action, amounting to the sum of two hundred and four dollars and eighty-four cents ($204.84).

Judgment rendered $4998.52. APRIL, A. D. 1894.

Clerk's Office of the District Court of the ------ District of the State of Nevada in and for the County of Lincoln.

I, the undersigned, Clerk of said Court, do hereby certify the foregoing to be a true copy of the Judgment entered in the above entitled action. Attest my hand and the seal of this Court this------ day A. D. 187------. Clerk.

5278 Endorsed: District Court------Judicial District—County of Lincoln—State of Nevada, plaintiff *vs.* Oregon Short Line and Utah Northern Railway Company, defendants. Judgment by Default. Filed April 19, 1894, J. A. Clark, Clerk.

IN THE DISTRICT COURT, STATE OF NEVADA, LINCOLN COUNTY.

State of Nevada, Plaintiff,
vs.
Oregon Short Line and Utah Northern Railway Company, Defendants.

You will please enter the default of said defendants in said action, that is of the Oregon Short Line and Utah Northern Railway Company and all owners of or claimants known or unknown and each lot, parcel, either real or possessory land described in said complaint in said action.

W. CULVERWELL,
District Attorney for Lincoln County, State of Nevada,
Attorney for Plaintiff.

J. A. CLARK, *Clerk of said Court,*
Pioche, Nevada, March 20th, 1894.

Endorsed: In the District Court State of Nevada, Lincoln County.—State of Nevada *vs.* Oregon Short Line and Utah Northern Railway Co.—Precipae for default.—Filed March 20th, 1894. J. A. Clark, Clerk.

5279 IN THE DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF LINCOLN.

The State of Nevada, Plaintiff.

vs.

Oregon Short Line and Utah Northern Railway Company, and all owners of or claimants known or unknown and the real estate possessory claimants and improvements in the County of Lincoln and State of Nevada, and described as follows, to-wit: Possessory claim to surveyed right of way for railroad of 65 miles more or less, running from the State line on the east, southwest down Clover Valley Wash, thence north up Meadow Valley Wash to within three miles of Pioche; with 60 miles, more or less, of prepared roadbed consisting of cuts, fills, tunnels, &c., and known as the Milford and Pioche line of Oregon Short Line and Utah Northern Railway, situated in Lincoln County, Nevada.

Value of Real Estate		$100,000.00
Value of Personal Property		25.00
		$100,025.00
State Tax	$900.22	
County Tax	2,650.66	
Total tax	$3,550.88	

Defendants.

The Summons in this action having been duly served upon the Defendants Oregon Short Line and Utah Northern Railway Company and all owners of or claimants known or unknown and
5280 the Real Estate and improvements in the County of Lincoln, aforesaid, on the 17th day of January A. D. 1894, by posting a certified copy of one Summons on the Bulletin Board at the Court House at Pioche, Lincoln County, and a certified copy also on the grade of railroad running between Bullionville and Panaca by the Sheriff of said County, and notice of the commencement of said suit having been duly published and the legal delay for answering of said defendants having expired, and no answer, plea, demurrer or appearance in said action having been put in or filed with the Clerk of this Court, by the said defendants, the default of the said defendants is hereby entered upon the application of the plaintiff.

Witness my hand and seal of said Court this 19th day of April, A. D. 1894.

(No Seal)

J. A. CLARK, *Clerk.*

Endorsed: In the District Court, State of Nevada, Lincoln County. The State of Nevada *vs.* Oregon Short Line and Utah Northern Railway Company.—Default.—Filed April 19th, 1894. J. A. Clark, Clerk.

IN THE DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LINCOLN.

State of Nevada, Plaintiff.

against

Oregon Short Line R. R. Defendant.

I the undersigned, County Clerk of the County of Lincoln,
5281 State of Nevada, and ex-officio Clerk of the District Court of the State, in and for said Lincoln County, do hereby certify the foregoing to be a true copy of the Judgment entered in the above entitled action and recorded in Judgment Book B of said Court, at page 179. And I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action.

Witness my hand and the seal of the District Court this 4th day of June, A. D. 1894.

(No Seal)

J. A. CLARK, *Clerk.*

STATE OF NEVADA, }
County of Lincoln, } *ss.*

I, H. J. Goodrich, County Clerk and ex-officio Clerk of the Fourth Judicial District Court in and for said County of Lincoln and State of Nevada, do hereby certify that the foregoing is a full, true and correct copy of the judgment roll, and of each of the papers, returns and endorsements embraced therein, in the action entitled: The State of Nevada *vs.* Oregon Short Line and Utah Northern Railway Company, and all owners or claimants known or unknown, and the real estate, possessory claims and improvements in the County of Lincoln and State of Nevada, described as " possessory claim to surveyed right of way for railroad of 65 miles more or less, running from State line on the east, southwest down Clover Valley Wash, thence north up Meadow Valley Wash to within three miles of Pioche, with 60 miles more or less of prepared roadbed, consisting of cuts, fills, tunnels &c. and known as the Milford and Pioche line of Oregon Short
5282 Line and Utah Northern Railway, situate in Lincoln County, Nevada. Value of Real Estate $100,000. Value of personal property $25.00. Total value $100,025.00. State tax, $900.22. County tax, $2650.66. Total tax $3550.88 "—Case No. 1308; consisting of the Complaint, Summons, and Return thereon. Precipae for Default, Default, Judgment and certificate of Clerk to Judgment Roll together with all endorsements of said papers now on file in my office.

Witness my hand and the seal of said Court this 24th day of May, A. D. 1901.

[SEAL.]

H. J. GOODRICH,

Clerk of the Fourth Judicial District Court, Lincoln County, Nevada.

"EXHIBIT D."

IN THE DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF LINCOLN.

THE STATE OF NEVADA, PLAINTIFF, *against* UTAH NORTHERN RY. AND OREGON SHORT LINE AND IMPROVEMENTS, DEFENDANTS.	Affidavit of Publication of Notice of Suit commenced.

STATE OF NEVADA, }
County of Lincoln, } ss.

5283 T. J. Osborne, of said County, being duly sworn, says: That he is a white male citizen of the United States, over twenty-one years of age, and is competent to be a witness on the trial of the above entitled action; that he is the proprietor of the Pioche Weekly Record, a newspaper printed and published weekly in the said County; that the Notice of Suit Commenced of which the annexed is a printed copy, and published in said newspaper at least three weeks commencing on the Eighteenth day of January A. D. 1894, and ending on the Eighth day of February, A. D. 1894.

T. J. OSBORNE.

Subscribed and sworn to before me this 27th day of February, A. D. 1894.

J. A. CLARK, *Clerk.*

The following is a true and complete copy of the printed notice of suit commenced, attached to the foregoing affidavit, to-wit:

New to-day.

NOTICE OF SUIT COMMENCED.

State of Nevada, County of Lincoln, District of Prosecuting Attorney's Office.

To the following named defendants and to all owners of or claimants to the real estate and improvements thereon, hereinafter described, known or unknown. You are hereby notified that suit

5284 has been commenced in the District Court of the State of Nevada, in and for the County of Lincoln, by the State of Nevada, Plaintiff, against the defendants hereinafter named and each of the following described tracts or parcels of land with the improvements thereon and all owners of, or claimants to the same, known or unknown, to recover the tax and delinquency assessed to said defendants against said property for the fiscal year commencing first Monday in January, A. D. 1893, and ending second Monday in September A. D. 1893, and that a Summons has been duly issued; and you are further notified that unless you appear and answer the

Complaint filed in the office of the District Court of the State of Nevada, in and for the County of Lincoln in said cause on or before the 27th day of February A. D. 1894, judgment will be taken against you, and the real estate and improvements herein described for the amount of tax and delinquency specified and cost of suit tax and delinquency Oregon Short Line and Utah Northern Railway Company and all owners of or claimants known or unknown.

The said action is brought to recover judgment for the sum of thirty-five hundred and fifty and eighty-eight one hundredths dollars, that is to say nine hundred and twenty-two one hundredths dollars State tax, and twenty-six hundred and fifty and sixty-six one hundredths dollars County tax, total amount thirty-five hundred and fifty and eighty-eight one hundredths dollars, together with ten per centum and twenty-five per centum on said sum as penalty all in gold coin, delinquent taxes on property hereinafter described, together with percentage and costs as is provided by law, as fully set forth in a complaint on file, the same being for tax on real
5285 and possessory claim and personal property for the year A. D. 1893, described as follows, to-wit:

Possessory claim to surveyed right of way for railroad of sixty-five miles, more or less, running from the State line on the east, southwest down Clover Valley Wash to within three miles of Pioche, with sixty miles, more or less, of prepared roadbed, consisting of cuts, fills, tunnels, etc. and known as the Milford and Pioche line of the Oregon Short Line and Utah Northern Railway situated in Lincoln County, Nevada, value of real estate $100,000.00; value of personal property $25.00; total $100,025.00.

W. CULVERWELL,
District or Prosecuting Attorney of Lincoln County.

Dated PIOCHE, NEVADA, *January 16, 1894.*

Endorsed: District Court, State of Nevada, County of Lincoln, State of Nevada. Plaintiff, vs. Oregon Short Line et al., Defendants. Affidavit of publication of Notice of Suit Commenced. Filed February 27th, A. D. 1894. J. C. Clark, Clerk.

(End of Exhibit D.)

5286 IN THE DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF LINCOLN.

(Exhibit E.)

STATE OF NEVADA, PLAINTIFF, *vs.* OREGON SHORT LINE AND UTAH NORTHERN RAILWAY COMPANY, DEFENDANT.	Execution.

The State of Nevada to the sheriff of Lincoln County, greeting:

Whereas, on the 20th day of March, A. D. 1894, the above named plaintiff recovered a judgment by default in the said District Court

of the State of Nevada in and for the County of Lincoln, against the above named Defendant Oregon Short Line and Utah Northern Railway Company for the sum of Forty-seven hundred and ninety-three 68/100 dollars, with interest at the rate of three per cent per month from_____until paid, together with $204.84 costs and disbursements, at the date of said judgment and accruing costs, now amounting to the sum of $1.50 as appears to us of record.

And, whereas, the Judgment Roll in the action in which the said action was entered is filed in the Clerk's office of said Court, in the County of Lincoln, and the said Judgment was docketed in the said Clerk's office, in said County, on the day and year first above written.

And the sum of $4,793.66 with interest and costs as aforesaid, is now (at the date of this Writ) actually due on said judgment.

5287 Now you, the said sheriff, are hereby required to make the said sum due on the said judgment, for damages, with interest as aforesaid, and costs, and now and hereinafter accruing costs, to satisfy said Judgment _____ out of the _____ personal property of the said Judgment debtor Oregon Short Line & Utah N. R. R. Co. or if sufficient personal property of said Judgment debtor cannot be found, then out of the real property in your County, belonging to it on the day whereon said Judgment was docketed in the aforesaid Lincoln County, or at any time thereafter; and make return of this Writ with ____ 60 days after its receipt by you, with what you have done endorsed thereon.

Witness my hand and the seal of said Court this 19th day of April A. D. 1894.

[L. S.] J. A. CLARK, *Clerk*.

Endorsed: In the District Court of the State of Nevada, in and for the County of Lincoln. State of Nevada, plaintiff *vs.* Oregon Short Line and Utah Northern Railway, Defendant. Execution. Filed on return this 29th day of May, 1894. J. A. Clark, Clerk.

(End of Exhibit D.)

5288 EXHIBIT E.

OFFICE OF THE SHERIFF,
Pioche, Nevada, May 29th, 1894.

STATE OF NEVADA, } ss.
County of Lincoln, }

I, E. D. Turner, sheriff of Lincoln County, State of Nevada, do hereby certify that I received the annexed execution on the 19th day of April, A. D. 1894, and under and by virtue of the commands thereof I did, on said 19th day of April A. D. 1894, levy upon all of the right, title and interest of the Oregon Short Line and Utah Northern Railway Company, and all owners or claimants, known

or unknown to certain real estate therein described, the judgment debtors therein named at the town of Pioche in said County, in and to the following described real estate and improvements, to-wit:

Possessory claim to surveyed right of way for railroad of sixty-five miles, more or less, running from the State line on the east, southwest down Clover Valley Wash, thence north up Meadow Valley Wash to within three miles of Pioche, with sixty-five miles more or less of prepared roadbed, consisting of cuts, fills, tunnels, etc., and known as the Milford Pioche Line and Utah Northern Railway, situated in Lincoln County, State of Nevada.

That I duly advertised said property for sale at Public auction to the best bidder for the least amount of parcel of said property,
5289 to satisfy this execution and all costs, by publishing the said notice of sale in the Pioche Weekly Record, a newspaper printed and published once a week in the town of Pioche and said County of Lincoln for the full period of twenty-one days, and by posting a like notice of said sale on the property to be sold, and one on the bulletin board at the court house, one on the bulletin board in front of S. E. Wertheimer's, one at the Post Office, one at the Bullionville store and one at the Z. C. M. I. Store at Panaca, one on the roadbed between Bullionville and Panaca, all in said County.

All of which said notices were published and posted for more than the full period of twenty-one days prior to said sale.

That each and every of said notices of sale contained a correct description of the property advertised for sale, the time and place of sale and the terms of the same. A copy of said notice is hereto annexed and made a part of this return.

That I did on the 17th day of May A. D. 1894, at the time and place designated in the said notice of sale, attend and offer for sale the least amount of said property to satisfy this execution and all costs.

That I sold the whole of said property to W. J. Dooly, Treasurer of Lincoln County, in trust for Lincoln County, for $5083.02 dollars in gold coin, he being the best bidder therefor, and that being the whole price paid. Therefore the said above sum of $5083.02 being the amount of this execution and all costs, Sheriff's commissions and etc.

5290 Therefore I return this execution satisfied in full.

E. D. TURNER,
Sheriff Lincoln County, Nevada.

Following is a full, true and correct copy of the printed notice referred to and annexed to the foregoing, to-wit:

SHERIFF'S SALE.

By virtue of an execution issued out of the District Court, in and for the County of Lincoln, State of Nevada, and to me directed and delivered for a judgment rendered in said Court, on the twentieth

day of March, A. D. 1894, in favor of the State of Nevada as Plaintiff and against the Oregon Short Line and Utah Northern Railway Company, and all owners or claimants known or unknown, to certain real estate therein described for the sum of forty-seven hundred and ninety three and sixty-eight one hundredths dollars debt, together with two hundred and four and eighty-four one hundredths dollars, tax costs, and all accruing costs and interest, I have levied on the following, to-wit: Possessory claim to surveyed right of way for railroad of sixty-five miles more or less, running from the State line on the east, southwest down Clover Valley Wash, thence north up Meadow Valley Wash, to within three miles of Pioche, with sixty miles more or less of prepared roadbed consisting of cuts, fills, tunnels, etc., and known as the Milford and Pioche line of the Oregon
Short Line and Utah Northern Railway, situated in Lincoln
5291 County, Nevada.

Notice is hereby given that on Thursday the seventeenth day of May, A. D. 1894, between the hours of nine in the morning and five in the evening, to-wit: at twelve M. I will sell all the right, title and interest of said Oregon Short Line and Utah Northern Railway, and of all owners or claimants known or unknown in and to the above described property, at the front door of the Court House at Pioche, Nevada, or the smallest portion thereof sufficient to satisfy said judgment and costs, at Public Auction for cash in hand to satisfy said execution and all costs.

E. D. TURNER, *Sheriff.*

Dated Pioche, Nevada, *April 26th, 1894.*

(End of Exhibit E.)

"EXHIBIT F."

This indenture, made the first day of December, A. D. 1894, between E. D. Turner, Sheriff of the County of Lincoln, State of Nevada, the party of the first part, and W. J. Dooly, Treasurer of said Lincoln County, in trust for Lincoln County, the party of the second part:

Whereas, by virtue of a writ of execution issued out of and
5292 under the seal of the District Court of the State of Nevada, in and for Lincoln County, tested the nineteenth day of April, 1894, upon a judgment recovered in said Court on the twentieth day of March, 1894, in favor of the State of Nevada and against the Oregon Short Line and Utah Northern Railway to the Sheriff directed and delivered, commanding him that of the personal property of the said judgment debtor, Oregon Short Line and Utah Northern Railway, in said County, he should cause to be made certain monies in the said writ specified, and if sufficient personal property of the said judgment debtor, Oregon Short Line and Utah

Northern Railway, could not be found, that then he should cause the amount of said judgment to be made of the lands, tenements, and real property belonging to said judgment debtor, Oregon Short Line and Utah Northern Railway, on the 20th day of March, A. D. 1894, or at any time afterwards; and whereas, sufficient personal property of said judgment debtor, Oregon Short Line and Utah Northern Railway, could not be found, whereof, he, the said Sheriff, could cause to be made the money specified in said writ, the said Sheriff did, in obedience to said command, levy on, take and seize all the estate, right, title and interest, which the said judgment debtor Oregon Short Line and Utah Northern Railway, so had, of, in and to said lands, tenements, real estate and premises hereinafter particularly set forth and described, with the appurtenances, and did on the 17th day of May, 1894, sell the said premises, after offering the smallest portion or quantity of said property, at public auction, in front of the Court House, in said County of Lincoln, State of
5293 Nevada, between the hours of nine in the morning and five in the afternoon of that date, namely, at twelve o'clock after having first given notice of the time and place of such sale by posting notices and advertising the same according to law; at which sale the said premises were struck off to the said party of the second part, for the sum of five thousand eighty-three and 02/100 ($5083.02) dollars, lawful money, the party of the second part being the only and highest bidder and that being the highest sum bidden, and the whole price paid; and whereas the said Sheriff, after receiving from said second party the bid as aforesaid, gave to the said second party such certificate as is by law directed to be given, and filed in the office of the County Recorder of Lincoln County, Nevada, a duplicate of such certificate; and whereas six months after such sale have expired without any redemption of the said premises having been made:

Now, this indenture witnesseth: That E. D. Turner, Sheriff aforesaid, the party of the first part, by virtue of the said writ and in pursuance of the Statute in such case made and provided, for and in consideration of the sum of money above mentioned, to him in hand paid as aforesaid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained, sold, conveyed and confirmed, and by these presents doth grant, bargain, sell, convey and confirm unto the said party of the second part, and to his successors in office, in trust for the County of Lincoln, all the estate,
5294 right, title and interest which the said judgment debtor, the said Oregon Short Line and Utah Northern Railway had on the 20th day of March, 1894, or at any time afterwards, or now has, of in and to all the following described premises, situate, lying and being in the County of Lincoln, State of Nevada, and described as follows:

The possessory claim to [illegible] right of way for railroad of sixty-five miles more or less, running from the State line on the east southwest down Clover Valley Wash, thence north up Meadow Valley

Wash to within three miles of Pioche, with sixty miles, more or less of prepared roadbed, consisting of cuts, fills, tunnels, etc., and known as the Milford and Pioche line of the Oregon Short Line and Utah Northern Railway, situate in Lincoln County, Nevada.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

To have and to hold the said premises with the appurtenances unto the said party of the second part and his successors in office in trust for the County of Lincoln, as fully and absolutely as he, the Sheriff aforesaid, can, may, or ought to, by virtue of the said writ and of the statute in such case made and provided, grant, bargain, sell, release, consign, convey and confirm the same.

In witness whereof, the said Sheriff, the party of the first part to these presents hath hereunto set his hand and seal the day and year first above written.

E. D. TURNER.
Sheriff of Lincoln County, Nevada.

Sealed and delivered in the presence of—
F. R. McNAMEE.

5295 STATE OF NEVADA,
County of Lincoln, } ss:

On this 23rd day of February A. D. 1901, personally appeared before me, a Notary Public in and for said County, E. D. Turner, Sheriff of the County of Lincoln, State of Nevada, personally known to me to be the Sheriff of said County at the date said deed was executed, and whose name is subscribed to the within instrument, and he acknowledged to me that he as such Sheriff aforesaid, executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[SEAL.] F. R. McNAMEE.
Notary Public.

Endorsed: E. D. Turner, Sheriff, to W. J. Dooly, Treasurer of Lincoln County, in trust for Lincoln County. Sheriff's deed.....

Recorded at request of F. R. McNamee, March 2nd A. D. 1901, in Book T of Real Estate Deeds at pages 208-9-10-11-12, Lincoln County, Nevada Records.

H. W. TURNER.
County Recorder.

(End of Exhibit F.)

Endorsed: No. 709. U. S. Circuit Court, Ninth Circuit, District of Nevada. Utah, Nevada and California Railroad Company
5296 *vs.* The Utah & California Railway Company, et al., Supplemental Bill of Complaint. Filed June 3, 1901.

T. J. EDWARDS, *Clerk.*

UNITED STATES OF AMERICA, }
District of Nevada, } ss:

I, T. J. Edwards, Clerk of the Circuit Court of the United States for the District of Nevada, do hereby certify that the above and foregoing is a full, true and correct copy of the original Supplemental Bill now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said Court, at my office, in Carson City, this [SEAL.] the 7th day of June, A. D. 1901, and in the year of the Independence the 125th.

T. J. EDWARDS,
Clerk.

(U. S. documentary revenue stamp. 10 cents, cancelled.)

CIRCUIT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF NEVADA.

Utah, Nevada and California Railroad Company, Complainant,
vs.
The Utah and California Railway Company, the Empire Construction Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly and H. B. Maxson, Defendants.

5297 Upon reading and filing the supplemental bill of complaint in this cause praying for an injunction restraining the defendants from the commission of certain acts complained of in said supplemental bill, and on motion of counsel for the complainant herein, it is ordered that the defendants, and each of them, appear before this Court at the Court Room thereof in Carson City, Nevada, (Federal Building) on the 24th day of June, 1901, at 10 o'clock a. m. and then and there show cause, if any they have, why an injunction as prayed for in said supplemental bill should not issue.

It is further ordered that a certified copy of said Supplemental Bill of Complaint be served upon defendants' Solicitor, and that complainant may support said supplemental bill of complaint by affidavits to be filed herein and served upon defendants' Solicitor on or before the 17th day of June, 1901.

It is further ordered that a copy of this order, certified under the hand of the Clerk and Seal of this Court be served upon said defendants.

Done and dated in open Court at Carson City, in the District of Nevada, this 4th day of June, A. D. 1901.

THOMAS P. HAWLEY, *Judge.*

(Filed June 4th, 1901.)

UNITED STATES OF AMERICA, }
District of Nevada, } ss.

5298 I, T. J. Edwards, Clerk of the Circuit Court of the United States for the District of Nevada, do hereby certify that the

above and foregoing is a full, true and correct copy of the original Order now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said Court, at my office, in Carson City, this [SEAL.] the 4th day of June, A. D. 1901, and in the year of the Independence the 125th.

T. J. EDWARDS,
Clerk.

(U. S. documentary revenue stamp. 10 cents, cancelled.)

Q. I show you Complainant's Exhibit 173. What is that?

A. It is the amended answer of the defendants to the original bill in this same case.

Mr. Severance offered in evidence Complainant's Exhibit 173, and the same is as follows:

COMPLAINANT'S EXHIBIT 173. (Whittemore.)

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT, DISTRICT OF NEVADA.

Utah, Nevada and California Railroad Company, Complainant,
vs.
The Utah & California Railway Company, The Empire Construction Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly, and H. B. Maxson, Defendants.

5299 AMENDED ANSWER TO ORIGINAL BILL.

The defendants, by leave of Court first had and obtained, file this their amended answer to the plaintiff's bill herein: and

Admit the allegations contained in paragraphs 1, 2, and 3 of the plaintiff's bill: also

Admit that the Nevada Pacific Railway Company was a corporation created in the year 1889, under the laws of the State of Nevada as alleged in paragraph 5 of plaintiff's said bill; but these defendants aver that all the rights and franchises of said corporation to construct, own and operate a railroad as described in said paragraph 5, and all the rights and franchises of said corporation to continue in existence or to own, hold, operate, or construct any railroad line or lines whatever in said State of Nevada, or to own or hold any property in said State of Nevada, and the right of the said Oregon Short Line and Utah Northern Railway Company as the successor of the said Nevada Pacific Railway Company to the said rights and franchises became void and ceased and determined absolutely by the failure of the said Nevada Pacific Railway Company and its successor the said Oregon Short Line and Utah Northern Railway Company to finish the construction of the line of railroad

described in the Articles of Incorporation of the Nevada Pacific Railway Company and put the same in full operation within six years after the incorporation of the said Nevada Pacific Rail-
5300 way Company, as required by the laws of the State of Nevada.

Admit that the several railway companies named in paragraph 6 of plaintiff's bill were consolidated into one company known as the Oregon Short Line and Utah Northern Railway Company, and that each of the said companies named in said paragraph assigned transferred and set over to the said Oregon Short Line and Utah Northern Railway Company all of the rights, privileges and franchises of each of said companies, as alleged and set forth in said paragraph 6.

Admit that in the years 1889 and 1890, the said Oregon Short Line and Utah Northern Railway Company resolved to construct, and did partly construct, a railroad from Milford, in the State of Utah, to a point known as Uvada on the Utah-Nevada State Line, and during said years it also constructed a railroad grade thence into Lincoln County, Nevada, southwesterly a distance of about forty miles to Clover Valley, and thence northwesterly from Clover Valley a distance of thirty miles to a point near Pioche in said County of Lincoln and State of Nevada, upon the line authorized under the charter and privileges prior to the consolidation aforesaid owned and enjoyed by said "Nevada Pacific Railway Company;" but deny that the Oregon Short Line and Utah Northern Railway Company caused a copy of its Articles of Incorporation, or due proof of its organization under the same, to be filed with the Secretary of the Interior or that the same were ever filed with the Secretary of the Interior; and deny that the said Oregon Short Line and Utah Northern Railway Company caused maps or profiles of the line
5301 of its railroad from Uvada, thence southerly through the State of Nevada to the southwestern line thereof, and also extending from a point upon said line known as Clover Valley Junction, thence in a northerly or northwesterly direction to the town of Pioche in said County and State, to be duly or otherwise prepared and submitted to the proper officer, or any officer, of the Land Department of the United States, or that thereafter, or at any time, said maps and profiles or any of them were by the said or any officer or by the Secretary of the Interior of the United States, duly approved; deny that said Oregon Short Line and Utah Northern Railway Company ever became fully or otherwise vested with the ownership and right of way shown or indicated upon said maps, or of any right of way whatever, between the eastern boundary of the State of Nevada and the southwestern boundary of said State or upon said branch line from Clover Junction to Pioche; deny that the right, title and interest so acquired, or in any manner acquired, by said Oregon Short Line and Utah Northern Railway Company has never been forfeited nor declared forfeited by the United States of America or by any act of Congress thereof; deny that the same continues a valid or subsisting or vested right, title or ownership in

the said or any right of way or the grade thereon constructed as aforesaid.

Deny that there was expended during the year 1890, or at any other time, by the said Oregon Short Line and Utah Northern Railway Company the sum of six hundred thousand ($600,000) dollars or any sum in excess of four hundred and eighty thousand ($480,000)
5302 dollars upon that portion of its proposed line of roadbed in Lincoln County, Nevada, in the construction of the grade, embankments, cuts, tunnels and work in and upon said proposed railroad. The said defendants aver, however, that after expending the amount of money aforesaid upon said work, the said Oregon Short Line and Utah Northern Railway Company in the year 1890 suspended and abandoned said work and said purpose of building said line of railroad and caused to be torn up all of its track and tracks laid on said proposed line of railroad from Milford, Utah, and sold and otherwise disposed of a large quantity of ties, rails and other construction material then on hand at Milford, Utah, to be used in the construction of said railroad, and has ever since failed to construct or complete its said proposed line of railroad in said Lincoln County, Nevada, or any part thereof; and by reason of the failure of the said Oregon Short Line and Utah Northern Railway Company to complete the construction of its said line of railroad in said Lincoln County and State of Nevada, all its railroad rights of way and franchises in the said County and State have become and now are void. Deny that the failure to complete the construction of said line of railroad was because the said Oregon Short Line and Utah Northern Railway Company became financially embarrassed and was unable to prosecute the work to completion, or that it was the intention of the said Oregon Short Line and Utah Northern Railway Company to thereafter, as soon as it was able to, or at all, continue and complete the same; but on the contrary, said defendants allege that said work was abandoned by said Oregon Short
5303 Line and Utah Northern Railway Company more than three years before said Company became financially embarrassed, and at the time of the abandonment of said work, said Company, if it had so desired, was able to continue and complete the same.

Deny that by the execution and delivery of its mortgage to the American Loan and Trust Company of Boston, as trustee, the said Oregon Short Line and Utah Northern Railway Company pledged and mortgaged amongst other property any line of railroad or right of way in the County of Lincoln, State of Nevada, as described in paragraph eight of plaintiff's bill, or any line of railroad or branches or extensions thereof, or any franchises, rights of way or privileges that the said Oregon Short Line and Utah Northern Railway Company then had or might thereafter acquire in said Lincoln County, Nevada.

Deny that thereafter in the year 1895, or at any other time, or at all, that any of the rights of way, franchises or property of the said Oregon Short Line and Utah Northern Railway Company in the

County of Lincoln and State of Nevada, were, pursuant to the terms of the decree of foreclosure and sale mentioned in paragraph nine of plaintiff's bill, or otherwise, sold by said master in said decree named, or that any of the rights of way, franchises or property of said Oregon Short Line and Utah Northern Railway Company last above named were, at any time, by said master or by any one, conveyed to the Oregon Short Line Railroad Company, or that said Oregon
5304 Short Line and Utah Northern Railway Company was let into possession of any of the rights of way, property or franchises of the said Oregon Short Line and Utah Northern Railway Company in the County of Lincoln and State of Nevada under the terms of said decree of foreclosure and sale, or otherwise, on or about the 15th day of March, 1897, or at any other time, or at all. Said defendants admit that said Oregon Short Line Railroad is a corporation created and existing under and by virtue of the laws of the State of Utah and was organized as such on the 9th day of February, 1897; but deny that the said company has power to own or operate or enjoy or maintain or extend all or any of the lines of railroad right of way and property formerly owned and enjoyed by said Oregon Short Line and Utah Northern Railway Company in said Lincoln County and State of Nevada.

Said defendants admit that at the time of filing said maps and profiles with the Land Office of the United States for the District of Nevada for approval by the Secretary of the Interior, the defendant, the Utah & California Railway Company, was only authorized by its charter and articles of incorporation to construct, own and operate a line of railroad to a point on the boundary line between the States of Utah and Nevada near what is known as Uvada, but deny that no title to said right of way shown upon said maps was ever acquired by said Utah & California Railway Company, and allege that thereafter and on the 22nd day of December, 1900, its articles of incorporation were duly and regularly amended so as to authorize and empower said defendants to construct, maintain and operate a
5305 line of railroad in said County of Lincoln and State of Nevada, as shown and indicated by said maps and profiles, and that said Company, on the 8th day of April, 1901, complied with the laws of the State of Nevada necessary for it to acquire the right to construct, maintain and operate a railroad in said State. Deny that said Company did not within three years begin the work of construction of its road, or that it has not expended three per cent of its capital stock in the prosecution of the purpose for which it was incorporated, or that it has never done any work whatsoever in the way of construction, or that it owns no railroad whatsoever nor railroad property, or that it has never expended exceeding one-tenth of three per cent of its capital stock in the prosecution of any corporate or other purpose.

Defendants deny that the local Land Office at Carson City, Nevada, erroneously or wrongfully held that the grant to and right of way of the Oregon Short Line and Utah Northern Railway Company was

forfeited, as alleged in paragraph thirteen of plaintiff's bill, or erroneously recommended that the maps and location of the defendant, the Utah & California Railway Company, be approved.

Deny that the Commissioner of the General Land Office, as alleged in paragraph thirteen of plaintiff's bill, recommended that the maps and profiles of the Utah & California Railway Company be disapproved and that the maps and profiles of the plaintiff be approved; and deny that the said maps of plaintiff were approved by the Secretary of the Interior on the 25th day of April, 1901, or at any
5306 other time. But defendants aver that the said maps and profiles of the plaintiff were only approved by said Secretary of the Interior as to the surveyed lands over which the line indicated by said maps extended across surveyed lands, and that the map showing the first twenty miles of said located line southwesterly from Uvada was entirely on unsurveyed lands and was not approved by said Secretary in any manner whatever, and that as to the line shown on the said second twenty miles southwesterly from Uvada said maps were only approved as to the last four miles thereof extending across surveyed lands, and that about two miles of said four miles of said line extending across surveyed lands extends over and across lands owned by private persons, and that as to these lands the defendant, The San Pedro, Los Angeles and Salt Lake Railroad Company, has received deeds of conveyance from the owners thereof covering that part of said lands over which the alleged located line of right of way extends. And that the said defendant, The San Pedro, Los Angeles and Salt Lake Railroad Company is now the owner and entitled to the possession of said last described lands.

Defendants further aver that as to the alleged located line of right of way indicated from Clover Junction to a point near Pioche, as described in plaintiff's bill, the same extends for about one-third of the distance over and across lands owned by private persons, and that the defendant, The San Pedro, Los Angeles and Salt Lake Railroad Company, has received deeds of conveyance from each of the owners of said lands over which the said alleged located line
5307 of right of way extends, and that the said defendant, The San Pedro, Los Angeles and Salt Lake Railroad Company, is now the owner and in the possession thereof.

Defendants further aver that the said alleged located line of right of way from Clover Junction to Pioche, as described in plaintiff's bill, extends for several miles over and across lands selected by the State of Nevada under an Act of Congress authorizing such selection, and that the said lands have been sold to private persons for the use and benefit of the defendant, The San Pedro, Los Angeles and Salt Lake Railroad Company, and that the said defendant Company is now in the possession thereof.

Defendants deny that the defendant the Utah and California Railway Company has not taken any steps whatever to build, construct, maintain and operate a railroad either under its general charter or its amended charter; and deny that it has not taken any steps

to or done any act whatever in respect of complying with the laws of the State of Nevada pertaining to the construction, maintenance and operation of a railroad in said State; and deny that it has no power to construct, maintain and operate a railroad in said State of Nevada and has not complied with the regulations of the Land Department or the laws of Congress in respect to the railroad proposed to be built and operated by it in the State of Nevada; and deny that notwithstanding its said amendment to its articles of incorporation that all of the acts of the said Utah and California Railway Company in making surveys and filing maps in the said Land Office in the
5308 District of Nevada, are null and void and secure to it no rights whatever.

Deny that the defendant San Pedro, Los Angeles and Salt Lake Railroad Company has not complied with the laws of the State of Nevada concerning the construction, maintenance and operation of a railroad in said State by a railroad corporation formed or created under the laws of another State; deny that it has not made, filed or prepared to be presented to the Secretary of the Interior, or to any Land Office of the United States, any map or profile showing the location of its road over and across, or into any part of the State of Nevada; deny that it is now conspiring or confederating with the said Utah and California Railway Company and the other defendants herein to obtain from said Utah and California Railway Company a pretended right to construct its railroad upon the line of location indicated upon the maps of the Utah and California Railway Company referred to in said bill, or thereby to construct, maintain and operate its railroad upon a line of right of way indicated upon the approved or any maps of or owned by said Oregon Short Line and Utah Northern Railway Company, or its assign the Oregon Short Line Railroad Company, or your orator, its pretended assignee.

Defendants deny that plaintiff is in the possession of the whole of said railroad grade, embankment and right of way described in paragraph sixteen of plaintiff's bill, or has provided for the construction of its railroad thereon a large or any such amount of material as set forth in said paragraph sixteen; deny that unless it is impeded or obstructed by the defendants herein, their agents or
5309 servants, the plaintiff will immediately or continuously lay down or construct, or maintain or operate a railroad over, along or upon the said right of way for the several sections, or any section thereof, upon said grade and roadbed so far as the same is constructed, or beyond the same, as fast as in due course of business the construction of said line of railroad can be completed, or at all, or will put the same into operation.

Deny that it is the purpose or intention of the plaintiff to continue said construction until its railway extends to a point of connection with the Pacific Ocean, near Los Angeles, or any other point in the southern part of the State of California or elsewhere. But defendants aver that the work of construction of a railroad by plaintiff, as set forth in paragraph [illegible] and other paragraphs of plaintiff's

bill, is being prosecuted for the sole and only purpose of retarding, preventing and discouraging the defendant, The San Pedro, Los Angeles and Salt Lake Railroad Company in its purpose and effort to construct a line of railroad between San Pedro Harbor in California and Salt Lake City, Utah, as provided in its articles of incorporation.

Defendants deny that the plaintiff has obtained from the Oregon Short Line and Utah Northern Railway Company a waiver or assignment of its rights or of the rights of the Oregon Short Line Railroad Company in and to the said railway grade and embankment, and aver that neither of the said last named companies have any rights whatever in and to the said railway grade that could be assigned to the plaintiff. Deny that the plaintiff now owns the
5310 said railway grade and embankment or any part thereof, as fully and completely as the Oregon Short Line and Utah Northern Railway Company and the said Oregon Short Line Railroad Company, or either or both of them at any time owned or possessed the said right of way, or that plaintiff is entitled to the rights or benefit or ownership or enjoyment of said companies in or to the said railroad right of way or embankment, or any part thereof, by virtue of the said assignment, or by virtue of its pretended location of the said grade, or the work of constructing a railroad thereon in which it claims in its bill to be engaged or otherwise; or by virtue of the maps by it made, filed or deposited in the Land Office of the United States for the District of Nevada, as set forth in said bill, or that by the means aforesaid, or by any means, the plaintiff has acquired in its own right a good or complete or perfect title or vested ownership in or to the said line of right of way for a railroad, as indicated upon the maps so filed by it or by the said Oregon Short Line and Utah Northern Railway Company, or that its said or any rights or title or interest or ownership are vested in it completely or perfectly under the Act of Congress of the United States referred to in plaintiff's bill, or that the plaintiff has any right, title, interest or ownership in or to the said line of right of way, grade and embankment, or any part thereof.

Deny that said defendants or either of them at the points on said grade described in plaintiff's bill, or elsewhere on said grade, forcibly entered upon the said grade, roadbed and embankment, cuts
5311 and tunnels, or constructed in or upon said line of right of way near the said Tunnel No. 1, or elsewhere, a barbed wire fence enclosing a cut upon said railroad grade and line across said right of way and roadbed, or that the defendants have built obstructions of trees or rocks at or near the said place or elsewhere on said grade by hauling trees into the cuts upon said line of right of way and rolling from the banks of such cuts large rocks upon the trees or thereby constituting an obstruction or barricade for the purpose of forcibly resisting or obstructing plaintiff, its agents or servants in and about the work of continuing its construction or completing or operating its said railroad upon said grade and roadbed.

Defendants deny that they or either of them or their agents, officers, servants, or employees have confederated together for the purpose of, or with the intention of, or by the means of a barricade or barbed-wire fence or any other contrivance, or are designing or intending to unlawfully, forcibly, violently interfere with, obstruct, and prevent plaintiff from peaceably or lawfully occupying, possessing, using, and enjoying said right of roadbed.

Deny that the defendant C. O. Whittemore has threatened violent resistance, and deny that the communication to Jacob Johnson, sheriff of Lincoln County, Nevada, from said defendant Whittemore set forth in plaintiff's bill, indicates or is any evidence of a lawless purpose conceived by said Whittemore, or the other defendants herein, or either of them, or that said communication was sent in expectation of
5312 violence, except violence on the part of plaintiff, its agents, servants and employees as indicated in the communication.

Defendants deny that the men employed by them on said grade were not engaged in railroad work, or in the construction of a railroad, and deny that said men had been at the time plaintiff filed its said bill for several days or for any length of time engaged only in constructing barricades and obstructions to the progress of the plaintiff in the prosecution of its work of completing its said railroad; and deny that said men, or any of them were at any time congregated or held in possession at any point or place on said grade for the purpose of unlawfully, forcibly, and with violence obstructing or interfering with the further construction by plaintiff of its said work.

Defendants deny that the San Pedro, Los Angeles and Salt Lake Railroad Company has not located any portion of its line of railroad and is not pretending to do any work elsewhere than upon the said grade; and deny that at the place where the defendants were engaged—at the time of the filing of plaintiff's bill—in the construction of a railroad grade that they had no railroad material nor facilities for transportation, nor anything requisite and necessary to the successful building and operation of a railroad and no means of transportation from said point either to Salt Lake City or Los Angeles, except by means of teams; and deny that any act or acts of the defendants, or either of them, show the intention of the defendants, or either of them, to merely obstruct and interfere with the operations of
5313 plaintiff in prosecuting its work of building its said railroad.

Defendants deny that they or either of them, or their agents or servants conspiring or confederating together have, without right, wrongfully or unlawfully set up a claim of title, interest and ownership in and to said railroad right of way, grade and roadbed, or the rights, interest and claims of the defendants are based entirely upon the provisions of the Act of Congress referred to in plaintiff's bill; and deny that the plaintiff has any title or interest in said right of way, grade and embankment to be clouded by the interest, title and claims of the defendants.

Defendants deny that they or either of them are unlawfully excluding plaintiff and its agents and servants from the said right of

way, grade, embankment, cuts and tunnels and deny that they or either of them are hindering, delaying or impeding plaintiff, its agents or servants in the work of constructing its said railroad, or have materially, or at all, added to the expense or cost of said work of construction. But defendants aver, if the plaintiff has been caused any loss or damage by any acts of the defendants complained of, that the said defendants are financially able to pay any such loss or damage and to respond to any judgment that may be obtained against them for such damage in any action at law that may be brought against them.

For a further answer and defense the defendants allege: That on or before the 20th day of March, A. D. 1894, the Oregon Short
5314 Line and Utah Northern Railway Company claiming to be the owner of that certain grade and right of way in the County of Lincoln and State of Nevada, extending from a point on the Nevada State Line known as Uvada, and running thence in a southwesterly course to a point known as and designated as Clover Valley Junction, about forty (40) miles distant from Uvada and extending thence in a northwesterly direction to the town of Pioche in Lincoln County, Nevada, a distance of about thirty miles, was in the possession of the same; that thereafter the said right of way and grade were sold by the Sheriff of Lincoln County, Nevada, for delinquent taxes for the year 1893, and the said right of way and grade were on the 17th day of May, 1894, sold by E. D. Turner, the Sheriff of Lincoln County, Nevada, for said taxes and the said E. D. Turner, Sheriff as aforesaid, by deed dated December 1, 1894, and acknowledged the 23rd day of February, 1901, did convey to W. J. Dooley, Treasurer of Lincoln County, Nevada, in trust for said County, all of the right, title and interest of said Oregon Short Line and Utah Northern Railway Company in and to the said grade and right of way.

That on or about the 4th day of March, 1901, at a regular meeting of the Board of County Commissioners of Lincoln County, Nevada, held on that day, a Resolution was duly and regularly passed in the words and figures following, to-wit:

"Resolved: That if the said Utah and California Railway Company or its assigns shall within six months from this date build and place in operation a Broad Gauge Railroad from Uvada, Utah, to the Culverwell Ranch in Lincoln County, Nevada, and pay the
5315 County of Lincoln the sum of $5083.00, then, and in that event the County of Lincoln will convey and confirm, unto said Utah and California Railway Company or its assigns all of the right, title and interest of said Lincoln County, in, to and concerning said Oregon Short Line and Utah Northern Railway Company's grade within the County of Lincoln."

[SEAL.] "JOHN SIMPSON,
Chairman Board of County Commissioners."

Approved:
Attest: H. J. GOODRICH,
Clerk of the Board."

That on the 6th day of April, 1901, pursuant to the authority granted, and in fulfillment of the conditions imposed by said resolution, the defendant, the Utah and California Railway Company, by its agents, servants and employees, entered upon and took the peaceable possession of the right of way, grade and embankment described in plaintiff's bill, and extending from the Utah-Nevada state line to Clover Valley Junction, and from Clover Junction to a point near Pioche, in Lincoln County, Nevada, and began the work of repairing said grade and putting the same in a condition for a railroad track to be laid thereon with the *bona fide* intention of building thereon a railroad track and improvements.

That thereafter, to-wit, on the 19th day of April, 1901, by a resolution of its Board of Directors duly made and passed, and by deed of conveyance, the said Utah and California Railway Company conveyed and set over unto the defendant, San Pedro, Los Angeles
5316 and Salt Lake Railroad Company, all of its right, title and interest in said right of way and grade, under said resolution of the Board of County Commissioners of Lincoln County, Nevada, and otherwise.

That previous to the 26th day of March, 1901, the said Oregon Short Line and Utah Northern Railway Company and the said Utah, Nevada and California Railroad Company had forfeited and lost all of their right, title and interest in and to said right of way and grade and the same had become a part of the public domain of the United States, except the interest of Lincoln County, Nevada, therein, under the tax deed hereinbefore mentioned.

That on the 26th day of March, 1901, the San Pedro, Los Angeles and Salt Lake Railroad Company began a survey and location of right of way, in accordance with the laws of the United States, extending over the same ground and right of way described in plaintiff's bill, and finished the same as far as Clover Valley Junction on the 2nd day of April, 1901, on which last date the said San Pedro, Los Angeles and Salt Lake Railroad Company began a survey and location of right of way over that part of the ground described in plaintiff's bill, extending from Clover Valley Junction to the head of Condor Canyon, near Pioche, in the County of Lincoln, State of Nevada, and completed the same on the 7th day of April, 1901, and on or about the 19th day of April, 1901, with the *bona fide* intention of building a railroad track and improvements thereon, in accordance with the laws of the United States and the laws of the State of Nevada, and according to the terms of its franchise, took from
5317 the defendant the Utah and California Railway Company peaceable possession of said right of way and grade, and began to improve the same for the purpose of building a railroad track thereon and remained continuously in possession of said right of way, and industriously prosecuted said work of improvement until compelled to desist therefrom by an order of this Honorable Court.

That on the _____ day of April, 1901, pursuant to a resolution of the Board of County Commissioners of said Lincoln County authoriz-

ing the same, a deed was duly and regularly executed by the Treasurer of said County to the defendant, the San Pedro, Los Angeles and Salt Lake Railroad Company, for all that part of the said right of way and railroad grade formerly owned by the Oregon Short Line and Utah Northern Railway Company from Clover Junction to a point near Pioche, in said County, and that said deed was duly and regularly recorded on said day in the records of said County.

That by virtue of the said resolution of the said Board of County Commissioners of Lincoln County, and of the deed last aforesaid, and said transfer and assignment made to it by the Utah and California Railway Company, and by virtue of said survey and location of said line of railroad and right of way aforesaid, the San Pedro, Los Angeles and Salt Lake Railroad Company became, and now is the owner of and entitled to the possession of the grade and right of way described in plaintiff's bill.

That the defendants, the Empire Construction Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil
5318 Kelly, and H. B. Maxson have no interest in or claim to said right of way and grade, or the cause of this action, except as agents and employees of the Utah and California Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company.

Wherefore, defendants pray that the temporary injunction and restraining order heretofore issued in this cause may be vacated and dissolved; that plaintiff take nothing by its bill herein, and that the same be dismissed; that defendants recover from plaintiff their costs herein expended, and for such other relief as may be equitable and just.

----------,
Solicitors for Defendants.

----------,
Of Counsel.

Q. Did the complainant secure a restraining order upon the filing of this bill?

A. After hearing, yes.

Q. Do you remember of a hearing at Carson City where the question as to whether the complainant should have a temporary injunction or restraining order was argued?

A. Yes, sir.

Q. Who were present at the argument of that matter?

A. The complainant was represented by—at least Judge Cornish was there; Judge Kelly, Attorney Williams, Mr. Varian,
5319 Mr. Trenmor Coffin.

Q. Well, that is enough I think for one side. Who represented the defendants?

A. Mr. T. E. Gibbon and myself, and Judge M. A. Murphy, who was local counsel of the company at Carson City.

Q. As the result of that argument, the complainant, the Utah, Nevada & California Railroad, secured a temporary injunction, did it not?

A. A temporary injunction restraining the defendants from interfering with the complainant in the occupancy of the grade from Uvada to Clover Junction and from Clover Junction to Pioche.

Q. That is the case in which Judge Hawley wrote the opinion, which is reported in 110 Federal Reporter?

A. Yes.

Q. Following upon that restraining order, what did the San Pedro road do with reference to the right-of-way below Caliente?

A. Well, prior even to that restraining order, and while this controversy was going on, the San Pedro Company was engaged in the survey and location of its line of railroad from Clover Junction southwesterly through the Meadow Valley Wash to the Nevada-California line.

Q. They had been engaged in surveying and locating that line through the Meadow Valley Wash from almost the time they began at Uvada?

A. Yes.

5320 Q. Had the San Pedro road acquired any right-of-way from Caliente southwesterly?

A. Yes, we had acquired a right-of-way over lands owned by private individuals.

Q. And had you taken any steps towards getting maps to file with the Government so as to get right-of-way over public land?

A. Maps were in course of preparation for that purpose.

(Paper marked Complainant's Exhibit 174, Whittemore.)

Q. I show you complainant's Exhibit 174. What is that?

A. It is copy of an affidavit of J. K. W. Bracken, who at that time was acting as right-of-way agent for the San Pedro Company.

Q. Mr. Bracken in this affidavit states quite a number of tracts of land that he has purchased for the San Pedro Company, beginning the 23rd of March, 1901. This is sworn to on the 22nd of June, 1901, before William M. McCrea, Notary Public. You recall that affidavit, don't you?

A. Yes, very well.

Q. Do you know whether the San Pedro road ever acquired through Mr. Bracken the lands he mentions here, to the best of your belief?

A. Why, it acquired them either by deed or contract. Some of them seem to have been by contract. My recollection is that that affidavit was prepared under my direction, and that it states substantially all the facts relating to the acquiring of the right-of-way.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 174, and it is agreed between counsel it may be received as proof of the facts therein stated.

Complainant's Exhibit 174 is as follows:

5321 COMPLAINANT'S EXHIBIT 174.

STATE OF UTAH, }
County of Salt Lake, } *ss:*

J. K. W. Bracken being first duly sworn on his oath deposes and says that the following statements are to the best of his knowledge and belief correct.

That he is now and has been in the employ of the San Pedro, Los Angeles & Salt Lake Railroad Company since the 23rd day of March, 1901, mostly as Right of Way Agent for said Railroad Company in Utah and Nevada, and has secured the following contracts and deeds to lands for right of way, depot and general railway purposes along the line of said San Pedro, Los Angeles & Salt Lake Railway Company as now surveyed, for the use and benefit of said San Pedro, Los Angeles & Salt Lake Railway Company.

Contract No. 10487, with the State of Nevada for the East half (1/2) of Section 12, Township 1 North, Range 67 East, Mount Diablo Base and Meridian, and also the Southwest quarter (1/4) of Section 7, Township 1 North, Range 68 East, Mount Diablo Base and Meridian, containing in all 478.28 acres. This land is filed on for depot and shop purposes, and first payment amounting to $119.57 has been made on the same.

Contract, Application No. 14515 with State of Nevada over and through the following described tract of land: The Northwest quarter 1/4 of the Northwest (1/4 of Section 2, Township 15 S.
5322 Range 66 East, Mount Diablo Base and Meridian, containing in all about 40.21 acres. This land is situated on the Muddy River, and is filed on for depot and round house purposes. First payment of $10.05 has been made on same.

Contract of Charles Culverwell, et al, dated May 9, 1901, life of contract six months, for right of way 100 feet wide through the following described tract or tracts of land.

The northwest quarter (¼), and the North half (½) of the Southwest (¼) of Section 8, and the East half of the Southeast quarter (¼) of Section 7, and the East half (½) of the Southwest quarter (¼), and the Southwest quarter (¼) of the Southwest quarter (¼) of Section 5, and the Southeast quarter (¼) of the Northeast quarter (¼) of Section 7, all in Township 4, S. R. 67 E., Mount Diablo Base and Meridian. Payment of $250 has already been made on same.

Contract of Joseph Conaway and wife, for strip of land 100 feet wide over and through the following described tracts of land:

The East half (½) of the Northwest (¼), and the Southwest quarter (¼) of the Northeast (¼), and the North half (½) of the Southwest quarter (¼) of Section 25, Township 4 S, Range 66 East, and the East half (½) of the Northeast quarter (¼) of Section 35, Township 4 S. R. 66 E. Mt. Diablo Base and Meridian, said land being taken for right of way purposes. Payment of $170 has already been made on the purchase price to complete contract.

Contract of F. C. Lee and wife, for strip of land 100 feet wide over and through the following described tracts of land:

5323 The Northwest quarter (¼) of the Southwest (¼), Section 8, Township 2 S, Range 66 E., Mt. Diablo Base and Meridian. Said tract comprises about 2.91 acres. Payment of $7.00 has been made on purchase price of same.

Contract of R. H. Langford, for a strip of land 100 feet wide for main line of said Railway Company, over and through the following described tracts of land:

The Southeast quarter (¼) of the Southwest quarter (¼) of Section 18, Township 2 S, R. 68 E. Mt. Diablo Base and Meridian, and the Northwest quarter (¼) of Northwest quarter (¼) of Section 19, Township 2 S, R. 66 E. Mt. Diablo Base and Meridian. $20 paid on purchase price of same.

Contract of John T. Morgan and wife, for a strip of land 100 feet wide over and through the following described tracts of land: the Northeast quarter (¼) of the Southwest quarter (¼) of Section 5, Township 2 S, R. 68 E. Mt. Diablo Base and Meridian. Payment of $10 already made on the purchase of this land.

Contract of Geo. K. Riding, for a strip of land 100 feet wide along the line of said Railway for main line purposes through and over the following described tracts of land:

The Northeast quarter (¼) of the Northwest quarter (¼) of Section 8, Township 2 S, R. 68 E. Mt. Diablo Base and Meridian. Payment of $7 already made on purchase price of said land.

Contract with S. V. Carson for right of way over and through unsurveyed lands on line of railway in Lincoln County,

5324 Nevada. Amount paid on same $250.

Contract with John H. Kiernan and wife, for a strip 100 feet wide on line of said railway through tract or tracts of unsurveyed land in Lincoln County, Nevada. Amount paid on same $250.

I have also procured the following deeds to land for the use of said Railway Company:

Deed from Eliza Culverwell to a strip or strips of land 100 feet wide through the following described tracts of land, for right of way purposes: The West half (½) of the Northeast quarter (¼) and the Southeast quarter (¼) of the Northeast quarter (¼) of Section 8, Township 4 S, R. 67 E. Mt. Diablo Base and Meridian. Consideration $100.

Deed from Gueseppe Delmue and wife for right of way purposes for strip of land 100 feet wide over and through the following described tracts of land: the West half (½) of Southwest quarter (¼) of Section 7, T. 1 S, R. 69 E. and the Northeast quarter (¼) of the Northeast quarter (¼), the southwest quarter (¼) of the Northeast quarter (¼), and the Northeast quarter (¼) of the Southwest quarter (¼), and the Southwest quarter (¼) of the Southwest quarter (¼) of Section 13, Township 1 S, R. 68 E. Mt. Diablo Base and Meridian, containing in all about 17.11 acres. Consideration $5.

Deed from A. O. Lee and wife, dated May 10, 1901, through and over the following described tracts of land: the Northeast quarter

(¼) of the Northeast quarter (¼) of Section 18, T. 2 S, R. 68
5325 E. and the Northeast quarter (¼) of the Northwest quarter (¼), Section 19, Township 2 S, R. 68 E. Mt. Diablo Base and Meridian. Containing in all about 6⅝ acres. Consideration $5.00.

Deed from Gueseppe Delmue and wife, dated May 11th, 1901, to strip of land 100 feet wide over and through the following described tract of land: The Northeast quarter (¼) of the Southwest quarter (¼), Section 13, Township 1 S, R. 68 E. Consideration, $5.00.

Deed from Charles P. Ronnow, dated May 13th, 1901, conveying a strip of land 100 feet wide over and through the following described tracts of land:

The Northeast quarter (¼) of the Northeast quarter (¼), Section 5, Township 2 S, R. 68 E. Mt. Diablo Base and Meridian, containing in all 3.23 acres. Consideration, $5.00.

Deed from Charles Mathews, Sr., and wife, dated May 13, 1901, conveying a strip of land 100 feet wide over and through the following described tract of land:

The West half (½) of the Southwest quarter (¼) and the Northeast quarter (¼) of the Southeast quarter (¼), Section 32, Township 1 S, R. 68 E., and the North half (½) of the Southeast quarter (¼) of Section 32, Township 1 S, R. 68 E. Mt. Diablo Base and Meridian, containing in all about 5 acres of land. Consideration, $5.

Deed from Mary A. Yoacham, widow, dated May 13, 1901, conveying a strip of land 100 feet wide for right of way purposes, over the following described land:

5326 The Southwest quarter (¼) of the Northwest quarter (¼) of Section 22, and the Northwest quarter (¼) of the Southwest quarter (¼) of Section 22, and the Northeast quarter of the Southwest quarter (¼) of Section 21, all in Township 3 S, R. 67 East, Mt. Diablo Base and Meridian. Consideration, $5.00.

Deed from Isaac Barton and wife, dated May 13, 1901, conveying a strip of land 100 feet wide for right of way purposes, over and through the following described tract of land:

The Southwest quarter (¼) of the Northwest quarter (¼), Section 11, and the Northwest quarter (¼) of the Southeast quarter (¼), Section 10, Township 4 S, R. 67 E. containing in all 6.81 acres. Consideration, $5.00.

Deed from Charles Mathews, Sr., dated May 13th, 1901, conveying a strip of land 100 feet wide, for right of way purposes, over and through the following described tract of land:

The Northeast quarter (¼) of the Northeast quarter (¼) of Section 25, Township 2 S, R. 67 E. Mt. Diablo Base and Meridian. Containing in all about 2.83 acres. Consideration, $5.00.

Deed from Dow Barton, dated May 15, 1901, conveying a strip of land 100 feet wide, for railway purposes, over and through the following described tract of land:

The Southwest quarter (¼) of the Northeast quarter (¼) of Section 11: the Northeast quarter (¼) of the Southwest quarter (¼) of Section 11, Township 4 S, R. 67 E. Mt. Diablo Base and Meridian.

5327 Containing 6.63 acres of land, more or less. Consideration, $5.00.

Deed from Dow Barton, dated May 15, 190 , conveying a strip of land over and through the following described tract of land:

The West half (½) of the Northeast quarter (¼) of Section 28, Township 3 S. R. 67 E., the southeast quarter (¼) of the Northwest quarter (¼), Section 28, Township 3 S. R. 67 E., and through and over the Northwest quarter (¼) of the Southwest quarter (¼) of Section 28, Township 3 S. R. 67 E. Mt. Diablo Base and Meridian, containing in all about 11 acres. Consideration $5.00.

Deed from Elizabeth Wadsworth and N. J. Wadsworth, dated June 10, 1901, conveying a strip of land 100 feet wide over and through the following described land:

The West half (½) of the Southeast quarter (¼) of Section 18, Township 2 S. R. 68 E. Containing in all 3.43 acres. Consideration $10.00

Deed from Ryan Brothers, dated June 15, 1901, to right of way, conveying 100 feet wide, through, over and across, the Northeast quarter (¼) of the Northwest quarter (¼) of Section 18; the Southwest quarter (¼) of the Northwest quarter (¼) of Section 18; the Northwest quarter (¼) of the Southwest quarter (¼) of Section 18, and the Northwest quarter (¼) of the Northwest quarter (¼) of Section 19, all in Township 4 South, Range 67 E. Mt. Diablo Base and Meridian. Also the Northeast quarter (¼) of the Northeast quarter (¼) of Section 24, in Township 4 S. R. 66 E. Mt.
5328 Diablo Base and Meridian. Containing in all about 11.6 acres. Consideration $687.50.

Also right of way from George S. Sawyer, dated June 19, 1901, being 100 feet through, over and across the surveyed land as described in deed of that date. Consideration $150.00.

(Signed) J. K. W. Bracken.

Subscribed and sworn to before me this 22nd day of June A. D. 1901.

[SEAL.] (Signed) Wm. M. McCrea,
Notary Public.

My Commission expires July 18, 1904.

5329

	Amts. Pd.		
State	$119.57	Delmue	$5.00
"	10.05	C. P. Ronnow	5.00
Culverwell	250.00	Chas. Mathew Sr	5.00
Conway	170.00	Mary Yoacham	5.00
Lee	7.00	Isaac Barton	5.00
Langford	20.00	Chas. Mathew, Sr	5.00
Morgan	10.00	Dow Barton	5.00
Riding	7.00	" "	5.00
Carson	250.00	Wadsworth	10.00
Kiernan	250.00	Ryan Bros	687.50
E. Culverwell	100.00	Geo. S. Sawyer	150.00
Delmue	5.00		
A. O. Lee	5.00	Total	2,091.12

(Filed June 25, 1901.)

5330 Q. Beginning at the end of the grade at Caliente, which was the subject of the temporary injunction which had been obtained by the Nevada & California Railroad Company against your company, had you acquired any right-of-way?

A. Yes.

Q. How much? I mean at that immediate place, if you remember.

A. We had acquired the right-of-way from Charles Culverwell through what was known as the Culverwell Ranch, probably a distance of half or three-quarters of a mile.

Q. And you acquired other rights-of-way?

A. And from there we acquired other rights-of-way over private lands for a distance of probably four or five miles.

Q. Near that same place?

A. Yes, continuing on through the Meadow Valley Wash. For a distance of five or six miles south from Caliente there were a number of ranches, in fact almost one continual line of private ownership, or private possession at least, and we had negotiated with the occupants of these several tracts of land and had acquired, either by contract or deed, right-of-way for railroad purposes over the lands.

Q. What did you do toward protecting your possession to that right-of-way, beginning at the end of the line, covered by the temporary injunction?

A. We started the construction of a grade, connecting with this grade that was in dispute, and extended that grade through the Culverwell Ranch, as I say, probably half or three-quarters of a mile, and then at other points through private lands beyond there. We commenced the construction and had constructed considerable grade.

5331 Q. What did you do, if anything, towards protecting the grade that you constructed on this ranch—Culverwell do you call it?

A. Culverwell, yes. At the dividing line between the old grade and the new grade we put up a barricade and a notice that that grade was the property of the San Pedro Company, and warning people to keep off.

Q. What happened to that barricade and notice?

A. When the Short Line reached that point, they ran their track-laying machine through the barricade, and started to lay track on the grade that we had constructed.

Q. Then what steps, if any, did you take in the suit pending in Carson City, the pleadings in which we have introduced in connection with your testimony?

A. I submitted affidavits showing these facts to Judge Hawley, and on my ex-parte motion he granted an injunction to the San Pedro Company, restraining the Utah, Nevada & California from interfering with the San Pedro Company in the location or construction of its line of railroad from Clover Junction to the Nevada-California state line.

Q. That is, through the Meadow Valley Wash?

A. Yes.

Mr. LOVETT. That testimony is objected to on the ground that it is hearsay and not the best evidence.

Mr. SEVERANCE. It is understood that the restraining order entered in favor of the Utah, Nevada & California Railroad Company at or about the time of the filing of the original bill, Complainant's Exhibit 170; also the temporary injunction granted by Judge Hawley in favor of the Complainant in that suit, the Utah, Nevada &
5332 California Railroad Company, covering the line from Uvada to Caliente, thence to Pioche; also the temporary injunction thereafter granted in favor of the San Pedro, Los Angeles & Salt Lake Railroad——

Mr. LOVETT. You mean restraining order, don't you?

Mr. SEVERANCE. I don't know which it was. We will put it in the alternative. The restraining order or temporary injunction thereafter granted in favor of the San Pedro, Los Angeles & Salt Lake Railroad Company mentioned by the witness, and any order entered afterwards by the court thereon, shall be obtained from the clerk of the United States Circuit Court at Carson City, Nevada, and furnished to the reporter and marked as exhibits herein and received in evidence, the same as though the same were here introduced.

The papers above referred to were subsequently furnished and the same were marked Complainant's Exhibits 175–A, 175–B, and 175–C, and are as follows:

Complainant's Exhibit 175–A.

5333 CIRCUIT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF NEVADA.

Utah, Nevada and California Railroad Company, Complainant,

vs.

The Utah and California Railway Company, the Empire Construction Company; the San Pedro, Los Angeles and Salt Lake Railroad Company; C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly and H. B. Maxson, Defendants.

Whereas, in the above entitled cause it has been made to appear upon the bill of complaint filed herein and the exhibits annexed thereto, and the affidavit of E. E. Calvin, this day produced to the Judge of said Court that a writ of injunction preliminary to the final hearing is proper, and that *prima facie* the complainant is entitled thereto, enjoining the defendants herein from the acts complained of and threatened to be committed:

Now on motion of said complainant, it is ordered that the defendants appear before the Circuit Court of the United States for the District of Nevada, at the court-room of said court, at Carson City, in said district, upon the third day of June, 1901, at ten o'clock a. m. of said day, and then and there show cause if any they have, why a preliminary injunction prayed for in said bill of complaint, should not issue; and it appearing to the undersigned Judge of said

Circuit Court that there is danger of irreparable injury being caused to the complainant before the hearing of said application for a preliminary writ of injunction can be heard, unless the said
5334 defendants are, pending such hearing, restrained as hereinafter set forth; Therefore, complainant's application for such restraining order is granted, upon its giving bond with two good and sufficient sureties, to be approved by the clerk of this court, in the penal sum of twenty-five thousand dollars, securing the said defendants against all loss or damages which may result from the issue of said order if it shall be finally determined that the same was improperly issued or that may be awarded to them by reason of the granting of said order.

Now, therefore, it is ordered that you, the said Utah & California Railway Company, the Empire Construction Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly, and H. B. Maxson, defendants herein, and each of you, and each and every of your agents, servants, attorneys and all persons acting by, through or under your authority or direction, be and you are hereby specially restrained and enjoined from entering upon the right of way and railroad grade, cuts, embankment, tunnels or any other portions thereof, of that certain line of railroad right of way and railroad grade described in the bill of complaint herein and being in Lincoln County in said State and District of Nevada, beginning at a point on the eastern boundary line of said state at or near a point now known as Uvada, and extending thence southwesterly along the said grade and right of way indicated by said railroad bed,
5335 cuts, embankment, tunnels, etc., to a point called Clover Valley Junction, a distance of about forty miles, and from said Clover Valley Junction extending along such right of way grade, embankment, cuts and fills, northerly or northwesterly a distance of thirty miles more or less to a point at or near the town of Pioche in said Lincoln County, and from in any manner obstructing, preventing or interfering with the said complainant, its officers, agents, attorneys, servants and employes, from proceeding peaceably and continuously with the work of construction of its railroad on and along the said right of way, railroad grade and embankment, until the further order of the court herein.

It is further ordered that a copy of this order certified under the hand of the clerk and seal of this court be served on each of the said defendants.

Dated, at Carson City, in the District of Nevada, this 27th day of April, 1901.

THOMAS P. HAWLEY, *Judge.*

Indorsed: No. 709. U. S. Circuit Court, Ninth Circuit. District of Nevada. Utah, Nevada and California Railroad Company, vs. The Utah & California Railway Company, et al. Rule to show cause and temporary restraining order. Filed April 27, 1901. T. J. Edwards, Clerk.

UNITED STATES OF AMERICA } ss.
District of Nevada. }

I, T. J. Edwards, Clerk of the Circuit Court of the United
5336 States for the District of Nevada, do hereby certify that the above and foregoing is a full, true and correct copy of the original order now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court at my office in Carson City, this the 19th day of May A. D. 1909 and in the year of our Independence the 133d.

(SEAL) T. J. EDWARDS, *Clerk*.

5337 COMPLAINANT'S EXHIBIT 175–B.

DISTRICT OF NEVADA, *ss*.

In the United States Circuit Court for said District, at a term thereof begun and held at Carson City, Nevada, on the 18th day of March, 1901. Present, the Honorable Thomas P. Hawley, Judge, the following order was made and entered of record, to-wit:

"UTAH, NEVADA & CALIFORNIA RD. CO.,
vs.
THE UTAH & CALIFORNIA RY. CO., ET AL.

The order to show cause, in this suit, why the preliminary injunction heretofore issued herein, should not be continued pendente lite, having been fully argued and submitted at a former day; also, the rule to show cause issued pursuant to the complainant's supplemental bill; and also the demurrer of the defendants to said supplemental bill, and the same having been duly considered by the court; and the court having rendered and filed its opinion herein, and having found that complainant has shown sufficient cause why the injunction order issued on the original bill and the affidavit of E. E. Calvin, filed therewith on the 27th day of April, 1901, should be continued pending final hearing and decree herein, it is ordered that said injunction issued on the original bill of complaint, stand and remain in full force and effect until the further order of this court; that the rule to show cause, under the supplemental bill, be,
5338 and the same is hereby discharged; that the demurrer to the supplemental bill be, and is overruled; and that the defendants have until the rule day in September next in which to answer the said supplemental bill. On motion of Mr. Murphy, of counsel for defendants, it is ordered that an exception be and the same is hereby, allowed to the defendants, to the order continuing the injunction, and to the order overruling the demurrer."

The above is a true copy from the record of an order made by said court on the 22nd day of July, 1901.

Witness my hand and the seal of said Court this 19th day of May, 1909.

T. J. EDWARDS, *Clerk.*

(Seal U. S. Circuit Court, District of Nevada.)

5339 COMPLAINANT'S EXHIBIT 175–C.

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT, DISTRICT OF NEVADA.

Utah, Nevada and California Railroad Company, Complainant,

vs.

The Utah and California Railway Company, The Empire Construction Company, San Pedro, Los Angeles and Salt Lake Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark, Adam Paul, Virgil Kelly and B. B. Maxson, Defendant and Cross Complainant.

Whereas, in the above entitled cause it has been made to appear upon the cross bill of the cross complainant filed herein, and the affidavit of Henry M. McCartney and George E. Carpenter, this day produced to the Judge of said Court, that a writ of injunction preliminary to the final hearing is proper, and that *prima facie* the cross complainant is entitled thereto, enjoining the complainant herein from the acts complained of and threatened to be committed:

Now on motion of C. O. Whittemore, Solicitor for the cross complainant, it is ordered that the complainant appear before the Circuit Court of the United States, Ninth Circuit, in and for the District of Nevada, at the court-room of said court, at Carson City in said District, upon the 19th day of September, 1901, at 10 o'clock
5340 A. M. of said day, and then and there show cause if any they have, why a preliminary injunction prayed for in said bill of cross complainant, should not issue; and it appearing to the undersigned Judge of said Circuit Court, that there is danger of irreparable injury being caused to the cross complainant before the hearing of said application for a preliminary writ of injunction can be heard, unless the said complainant is, pending such hearing, restrained as hereinafter set forth; therefore cross complainant's application for such restraining order is granted, upon its giving bond with two good and sufficient sureties, to be approved by the Clerk of this Court, in the penal sum of twenty-five thousand dollars, securing the said complainant against all loss or damages which may result from the issue of said order if it shall be finally determined that the same was improperly issued or that may be awarded to them by reason of the granting of said order.

Now, therefore, it is ordered that you, the said Utah, Nevada and California Railroad Company, complainant herein, your officers, agents, servants, attorneys, and all persons acting by, through or under your authority or direction, be and you are hereby specially

restrained and enjoined from entering upon the right of way and railroad grade, cuts, embankment of that certain line of railroad right of way and railroad grade described in the cross bill of complaint herein, and beginning in Lincoln County in said State of Nevada, at a point now known as Clover Valley Junction and running in a southwesterly direction a distance of about one hun-
5341 dred and forty (140) miles to a point near the Nevada-California state line in the said Lincoln County and state aforesaid, and from in any manner obstructing, preventing or interfering with the said cross complainant, its officers, agents, attorneys, servants and employees from proceeding peaceably and continuously with the work of construction of its said railroad on and along the said right of way, railroad grade, and embankment, until the further order of the court herein.

It is further ordered that a copy of this order certified under the hand of the clerk and seal of this court be served on complainant.

Dated at Carson City, in the District of Nevada, this 9th day of August, 1901.

THOMAS P. HAWLEY, *Judge.*

I certify and return that I received the within and hereto annexed Restraining Order on the 10th day of August, 1901, and that I personally served the same upon the Utah, Nevada & California Railroad Company, on the 13th day of August, 1901, at Caliente, Lincoln County, Nevada, by delivering to and leaving in the possession of J. C. Beye (Supt. of Construction) a certified copy of the said Restraining Order, duly certified by the clerk of the U. S. Circuit Court at Carson City, Nevada, to be a full, true copy of the original order.

5342 I also delivered to and left in the possession of the said J. C. Boyo a copy of the answer and cross bill of defendant, San Pedro, Los Angeles & Salt Lake Railroad Company, together with a copy of the affidavit of H. M. McCartney, and also Geo. E. Carpenter, at the same place and date.

J. F. EMMITT, *U. S. Marshal,*
By H. J. HUMPHREYS,
Chief Office Deputy.

Dated: Carson City, Nevada, August 17, 1901.

Endorsed: No. 709. United States Circuit Court, Ninth Circuit, District of Nevada. Utah, Nevada and California Railroad Company, Complainant, vs. Utah and California Railway Company et al., Defendants. Restraining Order. Filed August 20, 1901. T. J. Edwards, Clerk.

UNITED STATES OF AMERICA,
District of Nevada, } *ss.*

I, T. J. Edwards, Clerk of the Circuit Court of the United States for the District of Nevada, do hereby certify that the above and fore-

going is a full, true and correct copy of the original order now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at my office in Carson City, this the 19th day of May, A. D. 1909, and in the year of our Independence the 133d.

T. J. EDWARDS, *Clerk*.

Seal U. S. Circuit Court.
District of Nevada.

5343 Q. Do you recall about when it was that you procured on behalf of the San Pedro, Los Angeles & Salt Lake this temporary injunction or restraining order running against the Utah, Nevada & California Company, that you have mentioned?

A. My recollection is that it was the 9th day of August, 1901.

Q. At that time was the surveying crew or were the surveying crews of your company engaged at work in the field?

A. Yes.

Q. Was the Utah, Nevada & California Railroad Company, the sub-company or auxiliary company of the Oregon Short Line under which it was building its road in Nevada?

A. I understand so. I think it so states in the pleadings.

Q. I notice the bill of complaint in that case is sworn to by Mr. W. H. Bancroft as president. Who was Mr. Bancroft at that time, aside from being president of the Utah, Nevada & California Railroad Company?

A. He was general manager of the Oregon Short Line and, I believe, vice-president.

Q. He is the same Mr. Bancroft who is now a director and vice-president of the San Pedro, Los Angeles & Salt Lake road, isn't he?

A. Yes, sir.

Q. What was the next thing that was done after obtaining this temporary injunction or restraining order which you procured?

A. We went ahead with our work below Caliente, the work of constructing grade and completing the location of the line of railroad into California, and the work of the Utah & Nevada to California below Caliente was suspended.

5344 Q. It appeared by the evidence of Mr. McCartney, and I think of one or two others, that some time later in the year 1901 a joint survey was made through the Meadow Valley Wash. Do you remember about that?

A. Yes.

Q. Who made the arrangements for that joint survey? How did it happen to be made, if you know?

A. I remember being present at a conference at which that plan was talked of and the details arranged, at which Mr. Gibbon, Mr. McCartney and myself represented the San Pedro Company, and Judge Kelly and Mr. Williams and I think Mr. Ashton (either Mr.

Ashton or Mr. Barlow, one of the engineers of the Oregon Short Line) represented the Utah, Nevada & California.

Q. Previous to the time that that arrangement was made for the joint survey, had the Oregon Short Line or the Utah, Nevada & California Railroad Company done anything in the Meadow Valley Wash after the service of this restraining order or temporary injunction was procured in August?

A. My recollection is not, except they may possibly have done some further work with respect to completing the location of their line, something of that kind, some surveying. I am not sure as to that. But my recollection is that no further active construction was carried on by them below Caliente.

Q. Now, this old grade, that has been mentioned by you in your testimony, and which we have heard about from other witnesses, did not extend below Caliente, did it?

A. No.

Q. That was from Uvada to Caliente and thence north to Pioche?

A. Yes.

5345 Q. Was that the grade on which there were certain tunnels?

A. Tunnels between Uvada and Caliente, yes.

Q. No tunnels were constructed below Caliente and no grade constructed below there?

A. No grade at all below Caliente.

Q. Did your company take any steps to locate a different line down as far as Caliente than the one covered by this grade?

A. From where?

Q. From the north—Uvada or some other point in the north.

A. There was a line of location made from Salt Lake southwesterly for a considerable distance and then preliminary surveys had been made by Mr. McCartney, in Nevada, running a preliminary line which was westerly from the line of the Oregon Short Line, practically all the distance.

Q. Mr. McCartney testified to running a line partly up the hill, which did not include any tunnels, but had rather more difficult grade in some places than the line down through the tunnels. Is that the one you refer to?

A. Yes. He located a preliminary line that left Uvada and Modena to the east, and obviated all tunnel work. I think the work would be very much more expensive construction, but it avoided all tunnels.

Q. He testified that was a feasible route, and you so understood it?

A. Yes; a better route than the other.

Q. Now, that line would have connected up with your line from Caliente on through the Meadow Valley Wash?

A. Yes.

Q. And would have avoided all of this disputed right of way between Caliente and Uvada?

A. Yes.

5346 Q. Did you have any personal knowledge of the steps that were taken by your company in California?

A. No. I had nothing to do with California at all.

Q. You remember being at Salt Lake at the time Senator Clark came there, before this trouble, and had a dinner given him at the Alta Club, in which he made certain statements as to this proposed line?

A. Yes, I remember several occasions when he was there in which this proposed road was under discussion.

Q. It was publicly discussed, wasn't it?

A. Yes.

Q. And was Mr. Gibbon there with him at times?

A. My recollection is that he was, yes.

Q. He was an officer of the road as well as general counsel, wasn't he?

A. Yes, he was; of course from the time the road was organized, and he was very active in the matter of organizing the road before that.

Q. Up to the time that it was publicly announced by Senator Clark, Mr. Gibbon, yourself and others that he proposed to build a line of road from San Pedro to Salt Lake, had any steps been taken, as far as you knew, or the public knew, by the Oregon Short Line or any of its sub-companies, looking to the construction of a line of railroad from this direction?

A. Not that I knew of or had ever heard of, unless it might be the construction of the piece of road from Milford to Modena by the Utah & Pacific.

5347 Q. That was several years before?

A. Yes.

Q. I mean immediately prior to that.

A. None that I knew of.

Q. In addition to the steps that you have described, do you remember of the gentlemen with whom you were associated in the Salt Lake road, procuring a tax title to this old grade from Uvada down to Caliente and thence to Pioche, which was the subject of litigation in the state court in Nevada?

A. Yes.

Paper marked Complainant's Exhibit 176.

Q. I show you Complainant's Exhibit 176, and ask you what these documents are.

A. Amended and supplemental bill of complaint of Utah, Nevada & California Railroad Company, plaintiff, vs. John Simpson and others as county commissioners of Lincoln County, defendants, and an amended and supplemental petition and complaint in intervention of the San Pedro, Los Angeles & Salt Lake Railroad Company in the same case, and the decree and findings by the court in the same case.

Mr. SEVERANCE. I offer Complainant's Exhibit 176 in evidence.

Complainant's Exhibit 176 is as follows:

5348 COMPLAINANT'S EXHIBIT 176. (Whittemore.)

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF LINCOLN.

The Utah, Nevada & California Railroad Company, a Corporation, Plaintiff,

vs.

John Simpson, E. D. Turner and Henry Mathews, County Commissioners of Lincoln County, James W. Nesbitt, Treasurer of the County of Lincoln; and the State of Nevada, Defendants.

AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT FILED HEREIN BY LEAVE OF COURT.

Complaining of the above named defendants, the Plaintiff, the Utah, Nevada & California Railroad Company, alleges:

1. That the plaintiff was, on the second day of February A. D. 1899, duly organized and incorporated under the laws of this
5349 State as a railroad company for the purpose of constructing a railroad from the eastern boundary of the State of Nevada at a point and place now known as Uvada, southwesterly across the State of Nevada to the southwestern boundary of said State, and also a branch line extending from a point on the aforesaid main line now called Clover Valley Junction (being about forty miles southwesterly from the boundary line between the States of Utah and Nevada at a point known as Uvada), thence in a northerly or northwesterly direction a distance of about thirty miles to the town of Pioche in Lincoln County, Nevada; and for the purpose of utilizing, using and occupying the line of right of way and railroad grade constructed from about the said boundary line of the States of Nevada and Utah to and beyond Clover Valley Junction aforesaid, and to a point near to the town of Pioche in Lincoln County, Nevada, which was formerly owned and in part constructed by the Oregon Short Line & Utah Northern Railway Company.

2. That the defendants, John Simpson, E. D. Turner, and Henry Mathews, are, and since the first day of January, A. D. 1901, have been, the duly elected, qualified and acting Commissioners of the County of Lincoln, State of Nevada.

That the defendant James W. Nesbitt is, and since the first day of January, A. D. 1901, has been, the duly elected, qualified and acting Treasurer of the County of Lincoln in this State.

3. That on the fourth day of May, A. D. 1901, said plaintiff brought its certain bill for relief in this court against the defendants in the second paragraph of this complaint named, and that the said defendants have made answer thereto.

5350 That on or about the eleventh day of May, A. D. 1901, this Court gave leave to the plaintiff to file an amended and supplemental bill on or before fifteen days from said last named date.

4. Plaintiff alleges that it is the owner and has corporate power to own, hold, enjoy and use a certain right of way for a railroad extending from the eastern boundary of the State of Nevada at a point on said eastern boundary line at or near the town now known as Uvada, running thence in a southwesterly course passing a certain point known as Clover Valley Junction, across the State of Nevada to the southwestern boundary thereof, and also a right of way for a branch line and railroad right of way extending from the point upon the line above described designated and known as Clover Valley Junction, said point being distant about forty miles southwesterly from the border line between the States of Nevada and Utah, which said branch railroad right of way extends thence in a northerly or northwesterly direction to or near the town of Pioche in Lincoln County in this State, a distance of about thirty miles; that said right of way of plaintiff is granted to it by the United States of America under the terms of a certain law of the United States entitled "An Act Granting to Railroads the right of way across the public lands of the United States," approved March 3, 1875; and by reason of the plaintiff's compliance of the terms and conditions of said Statute and the construction of its road, the said ownership, right, title and interest of the plaintiff in and to said right of way and every
5351 part thereof is based upon and arises out of said Statute and grant from the United States of America.

That soon after the organization of plaintiff as a corporation under the laws of this State, for the purpose of constructing its railroad upon the line of right of way aforesaid, plaintiff by due corporate action, adopted the said line of right of way for its said railroad and branch lines, and authorized and directed its officers and servants to prepare and cause to be submitted to the proper officers of the Land Department of the United States and to the Secretary of the Interior thereof maps and profiles of its said right of way; and that thereupon the officers and servants of plaintiff caused to be prepared and filed in the proper land offices of the Government of the United States and to be submitted to the Secretary of the Interior a copy of its Articles of Incorporation, and due proofs of its organization under the same, and also filed with said Secretary of the Interior, for his approval, maps and profiles for a line of right of way for its said railroad. That maps and profiles for so much of its said right of way as extends from the border line between the states of Utah and Nevada near a point known as Uvada, extending southwesterly therefrom to a point known as Clover Valley Junction, were filed in the proper land offices of the United States having jurisdiction over the same, and duly submitting to the Secretary of the Interior, who upon the 24th day of April, A. D. 1901, duly approved the same. That maps and profiles covering and embracing the line from Clover Valley Junction aforesaid upon the surveyed lands of the United States

to or near to the town of Pioche were filed in the proper land
5352 offices of the United States, and were duly submitted to the Secretary of the Interior for his approval, and approved by the Secretary of the Interior on the ____ day of May, A. D. 1901.

That maps and profiles embracing and covering the right of way for plaintiff's line of railroad from Clover Valley Junction southwesterly through the State of Nevada to the boundary line between the States of Nevada and California were also duly prepared and filed in the proper land office of the United States having jurisdiction thereover, and submitted to the Secretary of the Interior for his action and approval, and were by said Secretary of the Interior duly approved on the ____ day of _____, A. D. 1901. That said maps and profiles of its said line of railroad showing the lines thereof across the public lands of the United States from the boundary line between the states of Utah and Nevada to Clover Valley Junction, a distance of about forty miles, and the said maps and profiles showing its line of right of way for a railroad across the said public lands of the United States from Clover Valley Junction to Pioche, Nevada, were identical with the line of right of way formerly of the Oregon Short Line & Utah Northern Railway Company hereinafter referred to.

That all of said maps and profiles of the plaintiff were filed with and approved by the Secretary of the Interior without objection of the said Oregon Short Line & Utah Northern Railway Company, or of the Oregon Short Line Railway Company.

5353 5. That the plaintiff commenced the construction of its line of railroad at the border line between the states of Utah and Nevada near the point known as Uvada, and has constructed upwards of ____ miles of its tracks in the direction of Clover Valley Junction aforesaid, and is now actively continuously proceeding to the construction of its said line of its railroad, and intends to continuously proceed to the complete and final construction of its entire line of railroad, and to occupy its said line of right of way, with a completed railroad, and to operate the same continuously from Uvada aforesaid, southwesterly through and past the said Clover Valley Junction to the southwestern border of the State of Nevada and from said Clover Valley Junction to and into the town of Pioche, Nevada.

6. Plaintiff alleges that the Nevada Pacific Railway Company was a corporation of the State of Nevada, and its franchises authorize it to construct a railroad connecting with the railroad of the Utah Central Railway Company's railroad at a point near the eastern boundary of the State of Nevada, which is now known as Uvada, and extending to the western boundary of said State, with two branch lines extending into the Counties of White Pine and Nye.

7. That on the 27th day of July, 1889, said Nevada, Pacific Railway Company, together with several other railway companies and corporations, pursuant to lawful authority, made and entered into certain articles of consolidation and agreement whereby said several corporations agreed to and with each other to unite and consoli-

5354 date, and did unite, form and consolidate their respective organizations, capital stock, railroads, property, and franchises of every nature and description into one company to continue in existence for a period of fifty years, and to be called and known as the "Oregon Short Line & Utah Northern Railway Company;" and thereby each of the several companies assigned, transferred, and set over to said Oregon Short Line & Utah Northern Railway Company, the new corporation, all of the rights, privileges, and franchises of each of said companies, parties thereto, to be held, owned and controlled by said consolidated corporation, its successors and assigns, with all of the rights of each of said parties as fully and completely in all respects and to all intents and purposes as said respective parties thereto did then, or could then own, hold, use, enjoy, or control the same (for a more particular and complete statement of the terms and conditions of said articles of consolidation and agreement, reference is made thereto, and the same will be exhibited to this honorable court).

8. That said Oregon Short Line & Utah Northern Railway Company complied in every respect with the laws of the State of Nevada whereby it became and was entitled to acquire, hold, own and enjoy a right of way for a railroad, and to construct, maintain and operate a railroad in the State of Nevada, and thereupon it resolved to construct its railroad upon its right of way from Milford in the State of Utah to the point on the boundary line between Utah and Nevada now known as Uvada, and thence into and through Lincoln County, Nevada, upon the lines authorized under the charter privi-

5355 leges prior to the execution of said agreement of consolidation, owned and enjoyed by the Nevada, Pacific Railway Company; and in pursuance of said determination, the said Oregon Short Line & Utah Northern Railway Company caused its articles of incorporation and due proof of its organization under the same to be filed with the Secretary of the Interior, and also caused maps and profiles of the line of its railroad from Milford, Utah, to the Utah, Nevada state line at the point now known as Uvada, and also from the said last named point thence southwesterly through the State of Nevada to the southwestern part thereof, and also extending from the point on said line known as Clover Valley Junction, herein described, and extending thence in a northerly or northwesterly direction to the town of Pioche, in Lincoln County in this State, a distance of about thirty miles, to be duly prepared and filed with the proper officers of the Land Department of the United States; and thereupon said maps and profiles were approved by the Secretary of the Interior of the United States in accordance with the terms and provisions of the aforesaid act of Congress of the United States entitled "An Act Granting to Railroads the right of way through the public lands of the United States" and in pursuance to the regulations in and requirements of the Secretary of the Interior of the United States and according to the practice of this department then in force. And thereupon said Oregon Short Line & Utah Northern Railway Company entered upon

the construction of its said railroad on said right of way, including the right of way for its said branch line from Clover Valley
5356 Junction to Pioche, and expended in the construction of the roadbed, embankments, cuts, fills and tunnels and work in and upon its right of way shown upon the maps and profiles so filed by it about the sum of, to-wit: Five Hundred Thousand Dollars. That in the State of Nevada it constructed in and upon its said line from the border of the States of Utah and Nevada from the point now known as Uvada the greater part of the roadbed for its line of railroad southwesterly toward Clover Valley Junction, a distance of about forty miles, and from said last named point northerly or northwesterly upon said branch line to the town of Pioche, a further distance of about thirty miles. That after expending large sums of money upon said work said Oregon Short Line & Utah Northern Railway Company became financially embarrassed and was unable at that time to continuously prosecute said work to completion, and thereupon temporarily suspended the prosecution of said work.

9. That on the first day of August, 1899, said Oregon Short Line & Utah Northern Railroad Company, made, executed and delivered its certain mortgage to the American Loan & Trust Company, of Boston, as Trustee, to secure certain negotiable bonds of said Company; and by said mortgage pledged and mortgaged, among other property, that certain line of railroad and right of way including the line of railroad proposed to be constructed into and through the County of Lincoln in the State of Nevada, extending to the southwestern boundary line of Nevada, together with branch line extending into the counties of White Pine and Nye, in the State of Nevada, together with such branches or extension of said line
5357 into and through Utah, Nevada, Arizona, Oregon and California, or any of them, as the Board of Directors might determine, and also all and singular those lines of railway and branches and extensions thereof that the railway company might thereafter construct or acquire, extending from any feasible point or points upon any of said lines by the most eligible route or routes, to any or all of such places as the directors of the railway company might be empowered to select or determine by virtue of the charter or articles of incorporation of the railway company, or any of its constituent companies consolidated into the said railway company, or by virtue of any amendments thereof.

10. That during the years A. D. 1891 and A. D. 1892, the officers of Lincoln County, Nevada, pretended to assess said railroad right of way, grades, embankments, cuts, fills, tunnels and constructed work upon said right of way of the said Oregon Short Line & Utah Northern Railway Company, claiming and pretending to act under and by virtue of the laws of the State of Nevada, and that such taxes so pretended to be assessed were paid. That in the year 1893 the then Assessor of the County of Lincoln in the State of Nevada made an alleged and pretended assessment of said property upon an alleged valuation of real estate at the sum of One Hundred Thousand

Dollars ($100,000.00), and of personal property at Twenty-five Dollars ($25.00), making a total valuation of One hundred Thousand and Twenty-five Dollars ($100,025.00), and thereafter extended and charged on the tax books of said County as against said prop-
5358 erty, taxes as follows: State Tax, Nine Hundred Dollars and twenty-two cents ($900.22); County Tax, Two Thousand Six Hundred and Fifty Dollars and sixty-six cents ($2,650.66); Total Taxes, Three Thousand Five Hundred and Fifty Dollars and Eighty-eight cents ($3,550.88).

That the said taxing officers in so pretending to assess said property, entered and extended upon the Tax Books of Lincoln County, Nevada, the following description of the property, or properties:

"Possessory claim for surveyed right of way for railroads of sixty-five miles, more or less, running from the State line on the East, southwest down Clover Valley Wash, thence North up Meadow Valley Wash to within three miles of Pioche, with sixty miles more or less of prepared roadbed, consisting of cuts, fills, tunnels, etc., and known as the Milford to Pioche line of the Oregon Short Line & Utah Northern Railroad Company situated in Lincoln County, Nevada."

11. Plaintiff, upon information and belief, charges and alleges the truth to be, that the said property so pretended to be assessed by said taxing officers of the County of Lincoln, Nevada, was not then subject to taxation under the laws of the State of Nevada; and that said taxing officers had no jurisdiction over the same, nor any part thereof; that the legal title of all of said property was then in the United States of America, and that the same was not subject to taxation in the State of Nevada, or in the County of Lincoln aforesaid.

5359 12. That on the 13th day of October, 1893, Oliver Ames and others as complainants brought their suit against the Oregon Short Line & Utah Northern Railway Company and other defendants impleaded with the Union Pacific Railway Company in the Circuit Courts of the United States for the District of Nebraska, Colorado, Idaho, Montana, Oregon, and in the District Court of the Third Judicial District of Utah; and the said defendants, the Oregon Short Line & Utah Northern Railway Company, being financially embarrassed and insolvent, all of its property was sequestered and taken from it and placed in the possession of Receivers appointed by said Courts having jurisdiction of the defendant and its property, and the said Oregon Short Line and Utah Northern Railway Company was enjoined and restrained from further managing, operating, and controlling any of its said properties from and after the 13th day of October, 1893, and by reason thereof was by the orders made in said Receivership cause restrained from further managing, operating or controlling any of its said property.

That said properties of the said Oregon Short Line & Utah Northern Railway Company continued in the possession and control of the Receivers so appointed for it (except as to certain mortgaged property, for which Receivers were appointed in certain other suits) until

the 6th day of May, 1898, at which time the said Receivers so originally appointed were discharged and other Receivers appointed to manage and control said trust, and that said successory Receivers so appointed remained in charge of the said properties and estate of the said Oregon Short Line & Utah Northern Railway Com-
5360 pany (except said mortgaged properties above mentioned) until the month of August in the year A. D. 1899.

13. That said sums of money so pretended to be assessed for taxes for the year 1893 were not paid when the same became due and payable; that said taxes became due and payable after the appointment of Receivers for the properties and estate and affairs of the said Oregon Short Line and Utah Northern Railway Company, and that afterwards and pending the said suit of Oliver Ames and others against said Oregon Short Line & Utah Northern Railway Company and others, and without leave of any of the Courts having jurisdiction of the properties and estate of the said Oregon Short Line & Utah Northern Railway Company, the State of Nevada by William Culverwell, the District Attorney of the County of Lincoln in the State of Nevada, on the 17th day of January, A. D. 1894, brought a certain action in this court against said Oregon Short Line & Utah Northern Railway Company and the owners and claimants known and unknown of the property in question, which was described in the complaint in said action as follows:

"Possessory claim to survey right of way for railroad of sixty-five miles more or less, running from the State line of the East, southwest down Clover Valley Wash, thence North up Meadow Valley Wash to within three miles of Pioche, with sixty miles more or less of prepared roadbed, consisting of cuts, fills, tunnels, etc., and known as the Milford and Pioche line of the Oregon Short Line & Utah Northern Railway situated in Lincoln County, Nevada."

5361 in which action the plaintiff therein prayed "judgment against Oregon Short Line & Utah Northern Railway Company for the sum of Three Thousand and Five Hundred and Fifty Dollars and eighty-eight cents ($3,550.88), the whole of said tax, and a separate judgment against said real estate and improvements for the sum of Three Thousand Five Hundred and Fifty Dollars and Eighty-eight cents ($3,550.88) (the tax due on real estate, improvements, and personal property) and the ten percent damages for nonpayment thereof at the time as required by law, and the additional penalty of 25 percentum also required by law, and for such other judgment as to justice belong, and for all costs subsequent to the assessment of said taxes of this action;" and thereupon on said day in said action a pretended summons was issued out of said Court under the seal thereof; a copy of said complaint in full and of said summons together with the return of the service thereon, being marked Exhibits "A" and "B" respectively, are hereunto annexed and made a part of this bill.

Plaintiff alleges that the said pretended summons did not require the defendant and all owners of or claimants to any real estate de-

scribed in said summons, known or unknown to appear and answer the complaint filed in said Court on a day certain, not less than thirty nor more than forty days from the date of the summons, but by the command of said pretended summons, addressed to "Oregon Short Line & Utah Northern Railway Co., and all owners of or claimants known or unknown," said defendants were "required to

5362 appear in an action commenced against you as defendants by State of Nevada as plaintiff, in the District Court of the State of Nevada, Lincoln County, at the town of Pioche, and answer the complaint therein, which is on file with the Clerk of said Court, within forty days after the service on you of this summons (exclusive of the day of service) if served in said County, or forty days if served out of said County but within this District, and in all other cases forty days; or judgment by default will be taken against you, according to the prayer of said complaint."

That said Sheriff of said Lincoln County, Nevada, on the 27th day of February, 1894, made and endorsed a return upon said summons in words and figures following:

"OFFICE OF THE SHERIFF.

State of Nevada, Lincoln County.

I hereby certify that I received the within summons on the 17th day of January, A. D. 1894, and personally served the same on the 17th day of January, A. D. 1894, by posting a certified copy of one summons on the bulletin board at the Court House at Pioche, Lincoln County, and a certified copy also on the grade of railroad running between Bullionville and Panaca.

E. D. TURNER, *Sheriff.*

FEBRUARY 27TH, A. D. 1894."

and that said return was and is the only return made by the Sheriff of his acts and doings under said summons or in said proceedings.

5363 That without any showing, in said proceedings, by return, affidavit or other proof, that the defendant could not, after diligent search, be found within said County, and without any lawful authority therefor, and without any jurisdiction in said Sheriff or in said proceedings to publish the same, a certain pretended notice of suit commenced, signed by the District Attorney for Lincoln County, Nevada, was published in the "Pioche Weekly Record," a newspaper printed and published weekly in said County, for a term of three weeks commencing on the 18th day of January, A. D. 1894, and ending on the 8th day of February, A. D. 1894, as appears by a copy of the affidavit of publication made by the publisher of said newspaper together with a true copy of said notice, which is set out in Exhibit "C," annexed hereto and made a part of this bill.

That, although the Statute then in force providing for the publication of the notice aforesaid, required that said notice should state a day certain therein, with notice to the defendants that unless they

appeared and answered the complaint on or before such day, so stated, judgment would be taken against them, and that such return day should be not less than thirty nor more than forty days from the date of the issuing of said summons, the return day fixed in the notice aforesaid was the 27th day of February, A. D. 1894, being more than forty days from the date of issuing of said summons, to wit: forty-one days, and that altogether the said Statute required said notice to set forth that the said action was to recover the tax and delin-
5364 quency assessed to the said defendant against said property for the fiscal year, naming the same, for which said tax was assessed, and although the Constitution of the State of Nevada provided that the fiscal year should begin on the first day of January of each year, the said notice contained the statement that the said suit was brought to recover the tax and delinquency assessed to said defendant, against said property "for the fiscal year commencing first Monday in January, A. D. 1893, and ending second Monday in September, A. D. 1893," and that, in the particulars aforesaid, the said summons and the said notice, were and are contradictory, and each was and is in violation of the Statute and did not give notice, as provided by law, to the railway company aforesaid, or any other claimant, known or unknown, and did not warrant or authorize the entering for a default for failure to answer or any judgment thereon.

14. That at the time of commencement of said suit and at the time of the posting of said summons, or copies thereof, and at the time of the publication of the said notice, the said Oregon Short Line & Utah Northern Railway Company was not in the actual possession or use of its said Railroad or properties, nor in the exercise of its corporate function; that all of its property of every sort and character, including its franchises to operate a railroad, were sequestered and possessed by the said Courts.

15. That notwithstanding the premises, thereafter on the 19th day of April, A. D. 1894, the then Clerk of said District Court of Lincoln County, Nevada, pretended to enter a default of said
5365 Oregon Short Line & Utah Northern Railway Company, and entered a pretended default upon the records of said Court in words and figures following:

IN THE DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF LINCOLN.

The State of Nevada, Plaintiff,

vs.

Oregon Short Line & Utah Northern Railway Company, and all owners of or claimants known or unknown, and the real estate possessory claimants and improvements in the County of Lincoln and State of Nevada, and described as follows, to-wit:

Possessory claim to surveyed right of way for railroad of sixty-five miles more or less, running from the State line on the east, southwest down Clover Valley Wash, thence North up Meadow Valley Wash to within three miles of Pioche, with 60 miles more

or less of prepared roadbed, consisting of cuts, fills, tunnels, etc., and known as the Milford and Pioche line of the Oregon Short Line and Utah Northern Railway, situated in Lincoln County, Nevada.

Value of Real Estate		$100,000.00
Value of Personal Property		25.00
Total Value		$100,025.00
State Tax	$900.22	
County Tax	2,650.66	
Total Tax	$3,550.88	

Defendants.

The summons in this action having been duly served upon
5366 the defendants Oregon Short Line and Utah Northern Railway Company, and all owners of or claimants known or unknown, and the real estate and improvements in the County of Lincoln aforesaid, on the 17th day of January, A. D. 1894, by posting a certified copy of one summons on the bulletin board at the Court House at Pioche, Lincoln County, and a certified copy also on the grade of railroad running between Bullionville and Panaca, by the sheriff of said County, and notice of the commencement of said suit having been duly published, and the legal delay for answering of said defendants, having expired, and no answer, plea, demurrer or appearance in said action having been put in or filed with the Clerk of this Court by the said defendants, the default of the said defendants is hereby entered upon the application of the plaintiff.

Witness my hand and seal of said Court this 19th day of April, A. D. 1894.

J. A. CLARK, *Clerk.*

(*Note, no seal attached.*)

Endorsed: In the District Court, State of Nevada, Lincoln County, The State of Nevada *vs.* Oregon Short Line and Utah Northern Railway Co., Default. Filed April 19th, 1894. J. A. Clark, Clerk."

And thereafter on the same day and in vacation and not in term
5367 time of said court, the said Clerk, without jurisdiction, entered a certain pretended judgment, in pursuance of said pretended default, against said Oregon Short Line and Utah Northern Railway Company in the following words and figures:

"IN THE DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF LINCOLN.

The State of Nevada, Plaintiff,

vs.

Oregon Short Line and Utah Northern Railway Company, and all owners of or claimants known or unknown and the real estate and

improvements in the County of Lincoln and State of Nevada, and described as follows, to-wit:

Possessory claim to surveyed right of way for railroad, 65 miles more or less, running from State line on the east, southwest down Clover Valley Wash, thence north up Meadow Valley Wash to within three miles of Pioche; with 60 miles more or less, of prepared roadbed consisting of cuts, fills, tunnels, etc., and known as the Milford and Pioche line of Oregon Short Line & Utah Northern Railway, situated in Lincoln County, Nevada.

Value of real estate		$100,000.00
Value of personal property		25.00
		$100,025.00
State tax	$900.22	
County tax	2650.66	
Total tax	$3550.88	

Defendants.

In this action, the defendants Oregon Short Line & Utah
5368 Northern Railway Company, and all owners of or claimants known or unknown having been regularly served with process and having failed to appear and answer the plaintiff's complaint filed herein, the legal time for answering having expired, and no answer or demurrer having been filed, the default of the said defendants in the premises having been duly entered according to law; upon application of said plaintiff to the Clerk, judgment is hereby entered against said defendants in pursuance to the prayer of said complaint.

Wherefore by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged and decreed, that the plaintiff do have and recover from the said defendants the sum of Forty Seven Hundred and ninety-three dollars and sixty-eight cents ($4793 dollars 68/100), with interest thereon at the rate of three per cent per month from the date hereof, till paid, together with said plaintiff's costs and disbursements, incurred in this action, amounting to the sum of Two Hundred and four dollars and eighty-four cents ($204.84).

Judgment rendered, $4,998.52/100. April ——, A. D. 1894.

Endorsed: District Court—Judicial District—County of Lincoln—State of Nevada, Plaintiff, *vs.* Oregon Short Line and Utah Northern Railway Co., Defendants—Judgment by default. Filed April 19, 1894. J. A. Clark, Clerk."

5369 Plaintiff, upon information and belief, alleges and charges, that the said Clerk was wholly without jurisdiction or power to take, make or enter said defendant as against the said Oregon Short Line & Utah Northern Railway Company, under the laws of the State of Nevada.

Plaintiff, upon information and belief, alleges and charges that said Clerk was not authorized to and had no power or jurisdiction to enter a judgment upon said complaint against said Oregon Short Line & Utah Northern Railway Company, and that the pretended

judgment entered by said Clerk was wholly and entirely without authority or jurisdiction, and was and is void.

And plaintiff further shows to the Court, that said pretended judgment was not signed by the Clerk of said Court, and that because of the want of jurisdiction in said Clerk to enter said judgment, and because said judgment was not signed by said Clerk of said Court, and because no legal summons was ever issued or served upon the said Oregon Short Line & Utah Northern Railway Company, and because no legal notice was ever published or given as required by law, giving said Company notice of said action, and because the property described in said complaint was not subject to the taxing power of the State of Nevada or the taxing power of taxing officers of the County of Lincoln in said State of Nevada, and because the legal title to the real estate was then in the United States and there was no property or improvement thereon capable of separation from
5370 the said estate, and because said right of way was not subject to sale under said tax proceedings or under the pretended judgment or separate and apart from the franchise of the defendant, and because said pretended judgment was never at any time entered up as such by the District Court of Lincoln County, Nevada, at any regular and stated, or other term thereof, and because the Court never at any time entered or made any judgment whatever upon said Complaint of the State of Nevada set forth in "Exhibit A," hereto annexed, and same was and is void and of no effect.

That notwithstanding the said Clerk of said Court, on the said 19th day of April, A. D. 1894, issued a pretended execution upon the said pretended judgment, to one E. D. Turner, then Sheriff of the said County of Lincoln, who thereupon pretended to levy upon and sell the property aforesaid and hereinafter more particularly described, as appears more fully by his return of his proceeding under said pretended execution, true copies of which said pretended execution and return are annexed hereto, marked "Exhibit D," and made a part of this Bill.

And plaintiff avers, that there was no special judgment entered for the sale of the property pretended to be assessed and described in said complaint, as prayed in said complaint; that said judgment was a personal judgment only, and that said pretended execution was not issued upon any special judgment against the property described in the plaintiff's complaint and did not embrace any order to sell the specific property described in the complaint in said action; that said pretended levy of said general execution under said
5371 personal judgment was and is wholly void, because said property could not be seized, taken or held in execution, separate and apart from the franchise or right to own same, under the laws of the United States or of this State.

That at the sale aforesaid, one W. J. Dooly, then Treasurer of said Lincoln County, assumed to become the purchaser, in trust, for said County, for the sum of Five Thousand and Eighty-three and 02/100 Dollars ($5,083.02).

And the plaintiff further shows to the Court, that it has no knowledge or information as to whether a certificate of sale was executed by the Sheriff aforesaid, to the said Dooly, as Treasurer aforesaid, but it avers that no deed was ever executed or delivered to said W. J. Dooly, as Treasurer, aforesaid, and that no deed was ever executed or delivered to any one, until on or about the 23rd of February, A. D. 1901, when the said E. D. Turner pretended to execute and deliver, as Sheriff of Lincoln County, Nevada, although he was not then such officer, unto W. J. Dooly, Treasurer of said County, in trust for Lincoln County, although said Dooly was not then such officer, a deed of the property aforesaid, which said property is particularly described in said deed, as "the possessory right to surveyed right of way for railroad of sixty-five miles more or less, running from the State line on the east, southwesterly down Clover Valley Wash, thence north up Meadow Valley Wash to within three miles of Pioche, with sixty miles more or less, of prepared roadbed, consisting of cuts, fills, tunnels, etc. etc., and known as the Milford and Pioche
5372 line of the Oregon Short Line & Utah Northern Railway, situate in Lincoln County, Nevada; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining," and thereupon caused said deed to be recorded on the second day of March, A. D. 1901, on pages 208–9–10–11 and 12 of Book T of Real Estate Deeds in the office of the Recorder of Lincoln County; a copy of which deed is annexed hereto, marked "Exhibit E," and made a part of this bill.

15a. That the said pretended assessment and the said action brought to enforce the collection of the amount of said pretended assessment and the entry of the said pretended judgment and the proceedings had thereunder were in violation of the Constitution of this State and of the fourteenth article of the amendments to the Constitution of the United States in that the said Oregon Short Line and Utah Northern Railway Company was sought to be deprived of its property without due process of law, and that it was thereby denied the equal protection of the laws; and that said pretended tax proceedings were contrary to and in violation of the Constitution and laws of the United States of America.

16. Plaintiff further shows to the Court, that about the first day of September, 1894, suits were instituted by the Trustees of certain mortgages covering certain divisions of the properties of the Oregon Short Line & Utah Northern Railway Company, and that in said suits Receivers of said mortgaged property were duly appointed; and that about the first day of January, 1895, a suit was instituted by the American Loan & Trust Company, Trustee, of said
5373 Oregon Short Line & Utah Northern Railway Company's consolidated mortgage, in the States of Oregon, Idaho, Wyoming, and Utah, and that such proceedings were thereafter had in said last named suit, including the suit pending in the Circuit Court of the United States for the District of Utah, that all the right, title, and interest of the said Oregon Short Line & Utah Northern Railway

Company in and to all of the real estate and railroad property of said Oregon Short Line & Utah Northern Railway Company, including its rights, title, and interest in or to the said line of right of way grade and improvements, in the State of Nevada were divested by judicial foreclosure sale and the same conveyed to and vested in the Oregon Short Line Railroad Company, a corporation then and theretofore organized for the purpose, amongst other things, of purchasing and receiving said property of the Oregon Short Line and Utah Northern Railway Company; and that thereafter said Oregon Short Line Railroad Company received the conveyance of all of said property, including that in the State of Nevada, which was formerly in the Oregon Short Line & Utah Northern Railway Company, and that at the time of conveyance of said property of the said Oregon Short Line & Utah Northern Railway Company to the said Oregon Short Line Railroad Company no deed or conveyance had been made by the Sheriff of Lincoln County, Nevada, to the Treasurer thereof, under the said pretended tax proceedings and sale.

16a. That said Oregon Short Line & Utah Northern Railway Company and said Oregon Short Line Railroad Company have
5374 transferred all their interest in said right of way, roadbed, and property to plaintiff.

17. Plaintiff now shows to the Court, that, at the time of the sale aforesaid and for more than six months next ensuing W. J. Dooly was Treasurer of said Lincoln County, and E. D. Turner was Sheriff of said Lincoln County, but that, at the date of the execution and delivery of the said deed, and for a long time prior thereto, the defendant, James W. Nesbitt, was and now is the Treasurer of said County and a successor in office to said Dooly: and one Jacob Johnson was and now is Sheriff of said County, and a successor in office to said Turner, and said deed was made without authority of law, and, in fact conveyed no title, because said Turner was not then authorized to make said deed, and said Dooly was not then authorized to receive said deed.

18. Notwithstanding the said property so pretended to be assessed for taxation in the year 1893, was not then subject to the taxing power of the County of Lincoln, Nevada, and that said taxing officers had no jurisdiction over it, or over the said Oregon Short Line & Utah Northern Railway Company to assess taxes against it therefor and notwithstanding the said proceedings under said petition filed in the name of the State of Nevada by the said District Attorney, this plaintiff is entitled to have the deed certificate of sale (if any was issued), judgment, default, summons and service thereof, aforesaid, set aside and vacated, and the said pretended deed to be cancelled of record and set aside as being made and
5375 existing without authority of law and as a cloud upon its title, without any payment whatever; yet, in order to do equity, this plaintiff—not waiving or releasing any of its said objections to the jurisdiction of the taxing officers of Lincoln County, Nevada, nor yet waiving any of its said objections to the validity or

force of the said pretended judgment aforesaid, nor waiving any of its objections to the validity or force of the said pretended deed referred to, nor to any or all of the proceedings under said pretended judgment—now offers upon the vacation of said pretended judgment and the proceedings had thereunder, to pay to the Clerk of this Court the full amount of said taxes, to-wit: Three thousand five hundred and fifty dollars and eighty-eight cents ($3550.88), together with the lawful costs of said proceeding, the expenses and all penalties, aggregating as plaintiff is informed and believes, the sum of Five Thousand and eighty-three dollars and two cents ($5083.02); and further offers to conform to and abide by all of the lawful orders that the Court may make herein in the premises in respect thereto.

19. Plaintiff shows to the Court, that the State of Nevada is, in fact, but a nominal party herein, and, as plaintiff is informed and believes, has no interest in the subject-matter of this controversy, except in the taxes in the amount thereof with the penalties lawfully due, because of the assessment hereinbefore mentioned; that the collection of such taxes and the disposition of all of the property received under sales had, pursuant to suits brought for the collection thereof, in the County of Lincoln, are entrusted by law
5376 in the County aforesaid, to the officers thereof, and although said suits are brought nominally in the name of the said State, the same are, in fact, brought, prosecuted and controlled by the District Attorney of said County;

That plaintiff has no remedy at law, and can only find relief in a court of equity.

Wherefore, Plaintiff prays that the defendants be required to answer this amended and supplemental bill; that, if a certificate of sale has been issued upon the sale made by the Sheriff to the County Treasurer, that the same be exhibited and submitted to the jurisdiction of the Court;

That pending this action, John Simpson, E. D. Turner, and Henry Mathews, County Commissioners aforesaid, and the said James W. Nesbitt, Treasurer aforesaid, be severally restrained from selling the property, or any part thereof, described and known as the possessory right to surveyed right of way for railroad of sixty-five miles, more or less, running from the state line on the east, southwesterly down Clover Valley Wash, thence north up Meadow Valley Wash to within three miles of Pioche, with sixty miles, more or less, of prepared roadbed, consisting of cuts, fills, tunnels, etc., etc., and known as the Milford and Pioche line of the Oregon Short Line & Utah Northern Railway Company, situate in Lincoln County, Nevada; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining.

5377 That upon the final hearing, such restraining order be made perpetual; and that it be finally decreed that the deed of February 23, 1901, from E. D. Turner, as Sheriff of Lincoln County, to W. J. Dooly, as Treasurer of Lincoln County, and recorded on the second day of March A. D. 1901, at pages 208–209–210–211 and 212,

in Book "T" of Real Estate Deeds, in the office of the Recorder of said County, together with any certificate of sale that may have been issued, be annulled and set aside.

That the sale made on the 17th day of May, A. D. 1894, by the said Turner, as Sheriff aforesaid, of the property aforesaid, be set aside.

That the execution issued out of this Court on the 19th day of April, A. D. 1894, and the summons issued on the 17th day of January, A. D. 1894, together with the alleged service thereof, all issued in the suit of the State of Nevada against the Oregon Short Line & Utah Northern Railway Company and all owners or claimants, known or unknown, of the real estate, possessory right, etc., last hereinbefore described, be annulled and set aside, and that the plaintiff have leave to pay the assessed taxes, with the penalties and costs, in the sum of Five Thousand and Eighty-three Dollars and two cents ($5083.02) and thereupon that its title to the property herein described be quieted and confirmed.

And that it have such other and further relief as to equity and good conscience belongs.

Attorney for Plaintiff.

Of Counsel.

(Copy.)

5378 STATE OF UTAH, *County of Salt Lake.* } *ss.*

----------, being first duly sworn, says that he is ---------- of the Utah, Nevada & California Railroad Company, that he has heard read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

Subscribed in my presence, and sworn to before me this ---- day of May, A. D. 1901.

Notary Public.

5379 Copy.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, STATE OF NEVADA, COUNTY OF LINCOLN.

The Utah, Nevada & California R. R. Company, a corporation, Plaintiff,

vs.

John Simpson, E. D. Turner and Henry Mathews, County Commissioners of Lincoln County, James A. Nesbitt, Treasurer of the County of Lincoln and the State of Nevada, Defendants.

Now comes the San Pedro, Los Angeles & Salt Lake Railroad Company and makes and files this its amended and supplemental

Petition and complaint in Intervention pursuant to an order of said Court made and entered on the 11th day of May A. D. 1901, and in response to said Plaintiff's amended and supplemental Bill of Complaint in said suit or action, filed on the 27th day of May, A. D. 1901, and as such intervener and in support of such intervention, alleges:

That it, said intervener, is a railroad corporation, duly incorporated, organized and existing under and by virtue of the Laws of the State of Utah, and doing business in said County of Lincoln, State of Nevada.

5380 That it is directly interested in the foregoing entitled suit or action and the result thereof, in that it has purchased a portion of the property described in the amended and supplemental Bill of Complaint in this suit or action, and in controversy in this suit or action, from said County of Lincoln, and the same has been conveyed to it by the Treasurer of said County of Lincoln, pursuant to an order of the Board of County Commissioners of said County of Lincoln, duly entered upon its minutes and records of proceedings, and therefore has a direct interest in defending said suit or action, and in answer to said amended and supplemental bill of Complaint of said Plaintiff, it denies and alleges as follows:

It denies on information and belief, that said plaintiff was, on the 2nd day of February A. D. 1899, or at any other time duly organized or incorporated under the laws of this State as a Railroad Company for the purpose of constructing a railroad from the eastern boundary of the State of Nevada, at a point or place known as Uvada, Southwesterly across the State of Nevada, to the Southwest boundary of said State, or a branch line extending from a point on the said alleged main line now called Clover Valley Junction, or thence in a northerly or northwesterly direction, a distance of about thirty miles to the town of Pioche in Lincoln County, Nevada; or for the purpose of utilizing, using or occupying the line of right of way or railroad grade constructed from about the said boundary line of the State of Nevada and Utah, to or beyond Clover Valley Junction aforesaid, or to a point near the town of Pioche, in Lincoln County, Nevada,

5381 which was formerly owned and constructed by the Oregon Short Line and Utah Northern Railway Company.

The said intervenor further denies that said plaintiff is the owner of, or has the corporate power to own, hold, enjoy or use that certain right of way for a railroad extending from the eastern boundary line of the State of Nevada, at a point now known as Uvada, and running thence in a southwesterly course to a point known as Clover Valley Junction, or a right of way for a branch line, or railroad right of way, extending from said Clover Valley Junction, in a northwesterly or northerly direction to or near the town of Pioche in this State, as alleged in said plaintiff's complaint; or that said right of way was ever granted to said plaintiff by the United States of America, under the terms of that certain law of the United States entitled "An Act granting to railroads the right of way across the public lands of the United States," approved March 3rd, 1875, or any other law; or that

said plaintiff ever complied with the terms and conditions of said Statute, or constructed any railroad under the provisions thereof, or that it has any ownership or right, or title or interest in or to the said right of way described in said complaint, or any part thereof, based upon or arising out of said statute, or otherwise.

And said intervenor further denies that said plaintiff by due corporate action, ever adopted said line of right of way for any railroad, or that it had any right or authority to adopt the same.

And said intervenor in this connection alleges:

5382 That, if the officers and servants of said plaintiff caused to be prepared, and filed in the Land Office of the United States, and with the Secretary of the Interior of the Government of the United States, maps and profiles for a right of way for a railroad, from the border line between the States of Nevada and Utah, near a point known as Uvada, extending therefrom to a point known as Clover Valley Junction, and thence to a point at or near Pioche in said County of Lincoln, State of Nevada, identical with the line of right of way formerly granted to the Oregon Short Line & Utah Northern Railway Company, as alleged in said plaintiff's complaint in this suit, and if the same were approved by said Land Offices and said Secretary of the Interior, as alleged in plaintiff's said complaint, such action by the said Land Offices and said Secretary of the Interior was entirely unauthorized and void, and gave no rights to said plaintiff.

And said intervenor further denies on information and belief, that said plaintiff, in good faith, commenced the construction of a line of railroad at the border line between the States of Nevada and Utah, near the point known as Uvada, or has, in good faith, built, or is now continuing to build, or intends to proceed to the complete and final construction of a line of railroad along said line of right of way as alleged in its said complaint, but avers that said plaintiff is a trespasser upon said property, having forcibly and unlawfully entered upon the same and ousted this intervenor therefrom, with the sole intention of preventing this intervenor or any other person or

5383 corporation from building a railroad through said County of Lincoln, to points in the State of California.

The said intervenor denies that there was any pretension of an assessment of said property described in said plaintiff's complaint, by the Assessor of said County of Lincoln in the year A. D. 1893, but alleges that said assessment, as set forth in said plaintiff's complaint was duly, properly and legally made, in full compliance with the Statutes of said State of Nevada.

And said intervenor denies that said property so assessed by the taxing officers of said County of Lincoln, State of Nevada, was not then subject to taxation under the laws of the State of Nevada, or that said taxing officer had no jurisdiction over the same and all parts thereof; or that the legal title of all or any of said property was then in the United States of America; or that the same was not subject to taxation in said County of Lincoln and State of Nevada.

And said intervenor further denies, upon information and belief, that, on the 13th day of October, 1893, or at any other time, at the instance of any party or parties, as complainants, in any court or courts having jurisdiction, all or any of the property of the Oregon Short Line & Utah Northern Railway Company in the State of Nevada, was sequestered or taken from it, or placed in the possession of receivers, or that it was in any way restrained from managing, operating or controlling all of its said property in said County of Lincoln, State of Nevada.

5384 And said intervenor denies that the notice of suit commenced (Plaintiff's Exhibit "C") referred to in plaintiff's complaint, was published without lawful authority and jurisdiction, or that it was not conformable in all essential particulars to the Statute in such cases made and provided, or that said Notice and the Summons issued in said action of the State of Nevada against the Oregon Short Line & Utah Northern Railway Company and the property described therein, are or were contradictory, or in any violation of the Statutes, or that they did not give notice as provided by law to said railway Company and any other claimant, known or unknown, to said property, or that they did not warrant and authorize the entry of a default for failure to answer, and a judgment thereon. But in this connection, said intervenor alleges that the defendants in said action, duly appeared in said action after service of said summons and the publication of said notice, and entered into a stipulation, giving them time to answer the complaint in said action, and failed to answer within the time given them by said stipulation, whereupon their said default was entered and judgment thereon duly entered by the Clerk of the Court wherein said action was pending, in full compliance with the Statutes of said State of Nevada, in such cases made and provided.

And said intervenor denies upon information and belief, that at the time of the commencement of said suit, or at the time of the service and posting of said summons, and the publication of said notice,

5385 the said Oregon Short Line & Utah Northern Railway Company was not in the possession of said railroad and properties, or that it was not in the exercise of its corporate functions, or that its property of any kind, in the County of Lincoln, State of Nevada, was sequestered or possessed by any Court or Courts.

And said intervenor without admitting the correctness of the copies of the records of said Court as set forth in said plaintiff's said complaint, denies that the said clerk of said Court, was without jurisdiction and power to make and enter said default set out in plaintiff's complaint, or that said clerk was not authorized, nor had full power or jurisdiction, to enter a judgment upon said complaint against said Oregon Short Line & Utah Northern Railway Company, and the property described in said complaint, or that said judgment was or is without authority or jurisdiction, or was, or is, void.

And said intervenor further denies the soundness of all the arguments and legal conclusions introduced into said plaintiff's said complaint.

And said intervenor denies that the levy and sale of the said property, under the execution referred to and set forth in plaintiff's complaint, was void, but alleges that all the proceedings in said action, including said levy and sale, were in all respects substantially in compliance with the law in such cases made and provided, and that by virtue of said sale the County of Lincoln became the owner of all of said property, after the time for the redemption thereof had expired, to-wit, the first day of December, A. D. 1894.

5386 And said intervenor denies upon information and belief, that the deed from E. D. Turner as Sheriff of said County of Lincoln, to W. J. Dooley as Treasurer thereof, referred to and set out in said plaintiff's complaint, was not made and executed on the date it purports to have been made and signed.

And said intervenor denies that said assessment, or the action brought to collect the same, or the entry of the judgment in said action, or the proceedings had thereunder, were in violation of the Constitution of this State, or of the Fourteenth Article of the Amendments to the Constitution of the United States, in that it was sought to deprive the Oregon Short Line & Utah Northern Railway Company of its property without due process of law, or that it was denied the equal protection of the laws; or that said tax proceedings were contrary to, or in violation of the Constitution or laws of the United States of America.

And said intervenor further denies upon information and belief, that through or by any proceedings in any Court or Courts having jurisdiction, in the years 1894 & 1895, the said Oregon Short Line & Utah Northern Railway Company was divested of any rights, title or interest in or to the said line or right of way, grade and improvements in the State of Nevada, or that it then had any right, title or interest in said right of way, grade and improvements, of which it could be divested, or that any part thereof ever became vested in the Oregon Short Line Railway Company, or that it received a

5387 conveyance of any part thereof, or that at the time of any such pretended conveyance of said property to the Oregon Short Line Railroad Company, no deed or conveyance had been made by the Sheriff of Lincoln County, Nevada, to the Treasurer thereof.

And said intervenor further denies upon information and belief, that said Oregon Short Line and Utah Northern Railway Company, and the said Oregon Short Line Railroad Company, have or had at the date of the commencement of this action, transferred all their interest in said right of way, roadbed and property to said plaintiff.

And said intervenor further denies that said deed from the Sheriff, E. D. Turner, to the Treasurer, W. J. Dooley, referred to in said plaintiff's complaint, was made without authority of law, or conveyed no title.

And said intervenor further denies that said plaintiff is entitled to have the said deed, certificate of sale, judgment, default, summons and service thereof, or either of them set aside or vacated, or that it has any title to be clouded thereby.

And for a further answer to said plaintiff's said complaint, and defense to said suit or action, said intervenor alleges:

That on the first day of December, A. D. 1894, the title to the right of way, grade, roadbed and improvements described in said plaintiff's complaint as extending from the boundary line of the States of Nevada and Utah, at a point now known as Uvada, to what is known as Clover Valley Junction, and thence to a point at or near
5388 Pioche in said County of Lincoln, formerly owned and occupied by the Oregon Short Line & Utah Northern Railway Company, was absolutely vested in the said County of Lincoln, by the failure of said Oregon Short Line & Utah Northern Railway Company, or any one in its behalf, to redeem said property from the sale thereof for delinquent taxes, as set forth in said plaintiff's complaint.

That said Oregon Short Line & Utah Northern Railway Company at and before said date last mentioned, had actually abandoned said property, and removed all of the movable property therefrom, and has paid no taxes thereon since that time, but has recognized the said title of the said County of Lincoln.

That the said County of Lincoln has, at all times, since said first day of December, A. D. 1894, been in the actual, peaceable, quiet and adverse possession of all of said property, claiming the same as of right, under said sale set forth in said plaintiff's complaint, and the failure of said Oregon Short Line and Utah Northern Railway Company, or any one in its behalf to redeem the same; until on or about the 4th day of March, A. D. 1901, when by due proceedings of its authorized officials, it gave the possession thereof to this intervenor, under an agreement with the Utah and California Railway Company, an auxiliary of this intervenor, to purchase the same, and that this intervenor, then and there took possession thereof under and by virtue of said agreement.

5389 That at the time of the commencement of this action or suit, the said County of Lincoln, and its representatives, had been in the quiet, peaceable, actual and adverse possession of said property, under a claim of title thereto, and continuously, for more than five years, and that during that time, neither the said plaintiff nor its grantors, had been seized or possessed of said property or any part thereof, and that said suit or action is therefore barred by the Statute of Limitations of said State of Nevada.

That at the time of the commencement of this suit or action, more than six years had expired since the entry of the judgment, the issuance of the execution and the sale of said property thereunder, as set forth in said plaintiff's complaint, and that said suit or action, in so far as it seeks to set aside, vacate and annul the same, is barred by the Statutes of Limitations of the State of Nevada.

That the said right of way and the incidents thereto, described in said plaintiff's complaint as formerly granted to and owned by the said Oregon Short Line and Utah Northern Railway Company, and which was purchased by the Treasurer of said County of Lincoln,

in trust for said County, as set forth in said plaintiff's complaint, has never been resumed or declared forfeited by the Government of the United States, or by any of its departments thereto authorized.

That said intervenor has, as hereinbefore stated, purchased from said County of Lincoln, a portion of said right of way, grade
5390 and improvements, to-wit, that portion extending from the end thereof, at a point about three miles north of Pioche, through what is known as Condor Canyon and Meadow Valley Wash to said Clover Valley Junction, and has a valid and subsisting contract and agreement with said County to purchase from it the balance of said right of way, grade and improvements, extending from said Clover Valley Junction, through Clover Valley, to a point at or near Uvada, on the boundary line of said States of Utah and Nevada.

That said plaintiff is not in the possession of said property, or in any part thereof, in good faith, or with any right or title thereto, but that the only possession thereof, that it has, was obtained by it on or about the 10th day of April, A. D. 1901, by then forcibly and fraudulently entering thereon, and forcibly and fraudulently ousting and ejecting this intervenor from a portion thereof.

That said intervenor is, and has been, since the said purchase from said County, in possession of that portion of that property, so purchased from said County as aforesaid.

Wherefore, the said intervenor prays that said Court adjudge and decree that said plaintiff take nothing by its said suit or action, and that the said intervenor be adjudged and decreed to be the owner of and entitled to the possession of all of said railroad right of way, grade and improvements extending from the end thereof, at a point about three miles north of Pioche, through Condor Canyon and Meadow Valley Wash to said Clover Valley Junction, and that its title thereto be quieted; and that it be further adjudged and
5391 decreed that said County of Lincoln is the owner of and entitled to the possession of all of said railroad right of way, grade and improvements extending from said Clover Valley Junction through Clover Valley to a point on the boundary line of said States of Utah and Nevada, and that its title thereto be quieted, and for such other relief as law and equity demands, and that it have judgment against said plaintiff for all its costs and disbursements in this suit incurred or expended.

GEORGE S. SAWYER
and C. O. WHITTEMORE,
Attorneys for Intervenor.

STATE OF NEVADA, }
County of Lincoln. } ss.

George S. Sawyer being duly sworn on oath, says that he is the attorney of said intervenor, and that he has read the foregoing petition and complaint in intervention and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are therein stated upon information or belief, and that

as to such matters he believes it to be true; and that no officer of said corporation is within said County, and that the facts therein stated are within the knowledge of this affiant.

GEORGE S. SAWYER.

Subscribed and sworn to before me this 1st day of June, A. D. 1901.

[SEAL.] GEORGE O. SAWYER, *Notary Public.*

Commission expires June 14th, 1901.

5392 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, STATE OF NEVADA, COUNTY OF LINCOLN.

The Utah, Nevada and California Railroad Company, a corporation, Plaintiff,

vs.

John Simpson, E. D. Turner and Henry Mathews, County Commissioners of Lincoln County; James A. Nesbitt, Treasurer of the County of Lincoln, in the State of Nevada, Defendants.

The San Pedro, Los Angeles and Salt Lake Railroad Company, Intervenor.

Now on this 29th day of June, 1903, came on to be heard before the said court the above entitled cause, and thereupon the said San Pedro, Los Angeles & Salt Lake Railroad Company, by C. O. Whittemore, its attorney, appeared and asked leave of the Court to withdraw its original and also its amended and supplemental petition and complaint of intervention herein, and good cause appearing therefor, the permission of the court was thereupon granted and thereupon the said petition and complaint of intervention and the amended and supplemental petition and complaint of intervention of the San Pedro, Los Angeles & Salt Lake Railroad Company was withdrawn from the files of said cause, and thereupon the said Court proceeded with the final hearing between the said plaintiff and

5393 the said defendants, and after hearing the evidence submitted and the arguments of counsel in behalf of the said plaintiff and the said defendants, and having considered the same,

The court now finds that the facts set forth in plaintiff's said complaint are true, and further especially finds that the said complaint, summons, return thereof, publication of summons, default and judgment set forth in the said complaint and the exhibits thereto attached and made a part thereof, are as shown and set forth therein.

And the said court as conclusions of law upon said findings of fact finds that the said summons and the service thereof and publication of the same were not in the form and manner required by law, and that said judgment was without authority of law entered by said Clerk, and that the same is not in accordance with the provisions of the law of the State of Nevada.

Wherefore, in consideration of the said findings of fact and conclusions of law the court does now here consider, adjudge and decree

that the said summons, copy of which is set forth in said complaint and said exhibits and the service thereof, and also a publication of the same and the said judgment entered in pursuance thereof, were contrary to law, and that no jurisdiction over the said defendant or its said property was thereby acquired, and that the same and each of them are null and void.

The Court further adjudges and decrees that the execution
5394 issued out of the said court in said cause, and the pretended sale thereunder, and the certificate of the sheriff based thereon, together with the deed made in pursuance thereof, are also illegal, null and void.

And the Court further considers, adjudges and decrees that the plaintiff is the legal owner and holder and in possession of all the property described and set forth in said complaint, and consisting of the said railroad right of way, roadbed, railroad and other structures and appurtenances thereto belonging, and its title to the same is hereby quieted and confirmed.

GEORGE S. BROWN, *Judge.*

(Filed June 29th, 1903. Recorded June 29, 1903, Book "B" of Judgment records, pp. 407, 408 & 409.)

5395 Q. Mr. Whittemore, it appears that the answer in this case was sworn to the first of June, 1901; the complaint some day in May, 1901, the decree on the 29th of June, 1903; and the court in the decree recites that the San Pedro, Los Angeles & Salt Lake Railway Company, by C. O. Whittemore, its attorney, appeared and asked leave of the court to withdraw its original and also its amended and supplemental petition and complaint of intervention herein, which permission was granted. That was the 29th of June, 1903. That was after the settlement had been arrived at between the San Pedro, Los Angeles & Salt Lake and the Oregon Short Line, wasn't it?

A. Yes.

Q. Long after?

A. Yes; it was either after or about the time that the settlement was arrived at or made, according to my recollection; June, 1903.

Q. Yes. It was settled June, 1902, wasn't it, or July, 1902?

A. I don't remember as to the date.

Q. At any rate, you remember that when you withdraw this, it was done after the amalgamation of the companies?

A. It was done pursuant to agreement and stipulation with other parties in the case.

Q. It was done after all the differences had been disposed of?

A. That is my recollection.

Q. In the opinion of Judge Hawley, in the 110 Federal, he mentions the fact that the Department of the Interior had ordered a hearing on the question of the surveys south of Caliente or toward California from Caliente; what do you know about that order?

How did it happen to be made? Did you have anything to do with it?

5396 A. The San Pedro Company had made a location or was engaged in the location of a line of railroad south from Caliente, and the Utah, Nevada & California Railroad were also engaged in the location and did locate a line of railroad through, and owing to the greater activity of the Short Line engineers their survey was completed very much ahead of ours, and when they offered their maps for approval by the Secretary of the Interior a protest was made on behalf of the San Pedro Company.

Q. By whom?

A. By myself, objecting to the surveys, the manner in which they had been made, and asking for a hearing, which was granted, and that hearing subsequently took place in Salt Lake City under the direction of the local Land Office, and my recollection is that that is the hearing which Judge Hawley refers to, and it relates to the locations made by each company and the maps showing those locations south from Caliente.

Mr. KELLY. Mr. Whittemore, aren't you mistaken? Was there ever any hearing under that order of June 11th in the Department, at any time or place?

WITNESS. Yes, there was a hearing in Salt Lake City.

Mr. KELLY. How could it have been if it was a Nevada proposition? You are mistaken about that, surely; you can't be right about it. There never was any hearing at all under that order. It was continued from time to time, half a dozen stipulations continuing it.

WITNESS. There was a hearing that took place at Salt Lake, at which Mr.——

Mr. KELLY. There may have been some testimony taken.

5397 WITNESS. Well——

Mr. SEVERANCE. You mean testimony.

Mr. KELLY. There was no hearing.

WITNESS. No, no hearing. What I mean by "hearing" is the taking of testimony.

Q. Of course the land office wasn't in Salt Lake, but was the testimony taken in Salt Lake to determine the question as to whether the Short Line people had made a legitimate survey down through there?

A. That is what I meant by "hearing." I probably did not use the proper word. There was testimony taken.

Mr. KELLY. That proceeding was never completed.

Q. Which maps were finally accepted by the Department, if you know?

A. Neither of those maps.

Q. Neither of them?

A. No.

Q. There was a new survey made, wasn't there?

A. All of those maps were withdrawn and new maps filed of a subsequent survey made by the San Pedro Company.

Q. What did you observe about the survey yourself—the survey made by the Oregon Short Line, as to the reason why its maps should not be approved?

A. The first thing that attracted my attention was the wonderful rapidity with which the survey was made.

Q. How did they make it?

A. For part of the distance with a chain attached to the back end of a wagon—surveyor's chain.

Q. It was by reason of that sort of surveying, was it, that they were able to outstrip your surveyors?

5398 A. Yes. Our surveyors had been out from Caliente eight or nine days, and the surveyors in Utah and Nevada overtook and passed us the first day. I might explain, however, that their survey was in the nature of a re-location of an old survey that had been made years before by the Oregon Short Line and Utah Northern, and it was more a checking up of that survey than an actual original survey.

Q. Do you know the firm of Deal & Mendenhall?

A. Yes.

Q. Who are they?

A. They were a firm of railroad contractors in Utah; their principal place of business was, I think, at Springville, Utah.

Q. Did they do any work for the San Pedro Company?

A. Yes.

Q. Where?

A. From Caliente south through the Meadow Valley Wash, and they did some of this work that was done by the San Pedro Company on the old grade prior to the first injunction.

Q. Did they do any work in the Meadow Valley Wash subsequent to the obtaining of the injunction by you against the Utah, Nevada & California?

A. Yes, they continued their work. They had started it before that under a contract, and continued for some time—I don't remember just how long.

Q. How many miles of grade did their contract cover, do you remember?

A. 60 miles, I think.

Q. Through the Wash?

A. From Caliente southwesterly, which would take it entirely through the Meadow Valley Wash.

Cross-examination by Mr. KELLY:

Q. Mr. Whittemore, you were employed on behalf of the
5399 promoters of the San Pedro road long before March 20th?

A. Yes, sir.

Q. You were employed in that service prior to January 1, 1901?

A. My recollection is somewhere along in September, 1900.

Q. What were you doing there in the way of actively looking after the matters? Was it arranging first with the Utah & California Company for rights which they claimed?

A. Yes, sir.

Q. Did you procure the stock and stock interests in that company?

A. My recollection is not—none of the stock. We procured an assignment, a conveyance from them of all the rights that their corporation held.

Q. What you obtained was a conveyance of property and not a stock interest? Did you obtain corporate control, have your own officers put in?

A. No, sir; it is my recollection we didn't.

Q. When did you examine the charter of the Utah & California road?

A. I don't remember the date. It was at the time these negotiations were on.

Q. And the time that the property was purchased?

A. Yes.

Q. That is, the property of the Utah & California?

A. Yes, sir.

Q. You found that the Utah & California had some maps and profiles filed under the Act of March, 1875, or filed in the land office at Carson City?

A. That is my recollection, yes.

Q. But those maps had not been approved by the Depart-
5400 ment at that time?

A. That is my recollection, yes.

Q. When were the articles of association of the Utah & California company first filed in Nevada?

A. I don't recollect. My best impression is that they were not filed until we started these negotiations.

Q. Were they filed earlier than the 15th of April, 1901?

A. I think it was about that time. My recollection is that I discovered that they had never been filed in Nevada and took steps to have them so filed.

Q. When were the articles of incorporation of the Utah & California company first amended so as to give it any right to acquire or own a railroad in Nevada?

A. Some time subsequent to that; along in April or May of 1901.

Q. Then, the old maps which had been prepared and filed by that company in Nevada were filed without having complied in any respect with the laws of Nevada by that company?

A. That is correct.

Q. Mr. Whittemore, you attended the meeting before the land office at Carson on the 11th of March, 1901, did you not?

A. Yes.

Q. That was a contest between the Utah, Nevada & California company, nominally, and the Oregon Short Line company, wasn't it?

A. Yes.

Q. And the Utah, Nevada & California Company?

A. That is correct.

Q. Those companies were represented at that hearing by
5401 Mr. Williams, were they not?

A. Yes, sir.

Q. There was a contest there as to whether the Utah, Nevada & California maps covered the Uvada, Caliente and Pioche line, and the maps of the Utah, Nevada & California, the old Oregon Short Line and Utah Northern maps, and the maps of the Utah & California Company were considered by the officers at that time?

A. Yes, sir.

Q. And at that time the Oregon Short Line counsel, Mr. Williams, announced the purpose of that company to complete that road, did he not?

A. I think there was some testimony offered to that effect.

Q. On March 11, 1901?

A. I know the question of their purpose came up.

Q. Wasn't it announced, either by testimony or in argument before the land officer, that it was the purpose of the Short Line through the Utah, Nevada & California to complete that construction?

A. My recollection is he announced that was the purpose of the incorporation of the Utah, Nevada & California Company in 1898.

Q. 1899, wasn't it—February, 1899?

A. Was it?

Q. Yes. The contest at that time was between the Utah & California and the Utah, Nevada & California for approval of the maps of the two companies covering the constructed grade?

A. Yes.

Q. And the Short Line Company was represented by Mr. Williams and the Utah, Nevada & California Company was represented by Mr. Williams?

A. Yes.

5402 Q. And he was insisting upon the validity of his maps and those companies' maps as against yours?

A. That is right.

Q. And standing by the right of that company to complete the road under the maps filed?

A. That is right.

Q. The contest at that time related to what I will call the Uvada-Pioche line?

A. Yes.

Q. At the hearing then, March 11th, you were representing the same interests which were afterwards created under the San Pedro, Los Angeles & Salt Lake Railroad organization?

A. Yes, sir.

Q. You were representing that interest under the name of the Utah & California Company?

A. Yes, sir.

Q. You had procured a vote of the proper officers of the Utah & California Company authorizing you to appear in its name and to resist the claim of the Utah, Nevada & California Company to the old grade?

A. Yes, sir.

Q. Before the land office?

A. Yes, sir.

Q. Of course that authority so obtained from the Utah & California Company was in the interest of the promoters of the San Pedro road, which had not then been incorporated?

A. Yes, sir.

Q. Of course you advised your employers and associates that the Utah, Nevada & California Company was making claim to that right of way? They knew it?

A. The claim was made in the land office and the courts.

Q. Yes, but you knew of their claim before that, didn't you?

5493 The case had been set for hearing sometime before the 11th of March, hadn't it?

A. I can't remember just when it was I first heard of it, but I knew at the time that we were negotiating and did negotiate for the Utah & California maps, that a claim was being made by the Utah, Nevada & California for the same——

Q. For the same right-of-way?

A. For the same right-of-way.

Q. For the purpose of building a railroad on?

A. I assume so, yes, sir.

Q. Now, you appeared before the register and receiver under authority of the vote made the 9th of March, did you not? (Handing witness paper.) 9th of March, 1901.

A. Yes.

Q. The vote of the Utah & California Company?

A. Yes, sir.

Q. Before this vote was passed by that board, you were advised of the claim of the Utah, Nevada & California and the Short Line Company to that claim of roadbed, and this vote and your appearance there were for the purpose of resisting the claims made under the Short Line on behalf of the promoters of the San Pedro Company; is that right?

A. Yes, it was for that purpose and to endeavor to get the approval of those maps.

Q. On the day of the hearing at Carson, testimony was taken before the register and receiver?

A. Yes.

Q. And an argument was had?

A. Yes.

Q. The testimony showed the filing of the maps of the Utah, Nevada & California some time during the preceding year?

A. Yes.

Q. It showed the return of those maps to the U., N. & C. for
5404 correction, did it not?

A. That is my recollection.

Q. And the delivery of those maps through the registered mail to Cleveland, a director of that company in Nevada?

A. Yes.

Q. The delay that ensued between the return of those maps to Cleveland and the re-filing of them in the land office?

A. Yes, that was brought out.

Q. That was all brought out. And at that hearing, and as the result of that hearing, the local land officers, the register and the receiver, on the 5th of April, decided in your favor?

A. That is my recollection, yes.

Q. An appeal was at once brought and allowed from that hearing to the Secretary of the Interior?

A. Yes, sir.

Q. On the 24th day of April, 1901, the matter was decided in the Department of the Interior and the decision of the local land office was reversed; that is right, isn't it?

A. Yes.

Mr. KELLY. I will now offer a copy of the decision of the local land office made on the contest between the Utah, Nevada & California Company and the Utah & California Company in respect to the Uvada-Pioche grade, which local land office finding and decision was rendered on or about_____, and also the decision of the Secretary of the Interior on appeal from said decision, which was rendered April 24, 1901.

The decisions above offered are as follows:

5405 STATEMENT OF FACTS IN UTAH, N. & C. R. Co. *v.* UTAH & C. RY. CO., ET AL.

(Circuit Court, D. Nevada, July 22, 1901.)

The conflict between the parties which resulted in the institution of the present suit was commenced by order of the commissioner of the general land office, made January 16, 1901, directing a hearing before the local land office in Carson City, Nev., to determine the rights of the respective corporations to the rights of way herein involved. Pursuant to said order, after notice duly given, this hearing was had March 11, 1901, and upon the proofs then submitted the register and receiver found the following facts:

"(1) That during the years between August 28, 1889, to and including February, 1890, the Oregon Short Line & Utah Northern
5406 Railway Company caused to be surveyed a line of route commencing at Milford, territory of Utah, and running in a westerly direction to within about four miles from the town of Pioche, in the County of Lincoln, State of Nevada, and between the same dates the said company caused to be graded a large portion

of said roadbed, and constructed about 3½ miles of track leading from the town of Milford in a westerly direction; that in the year 1890 all grading and construction work was abandoned, and the 3½ miles of track theretofore laid was torn up and removed from said line or route, and since the year 1890 the said Oregon Short Line & Utah Northern Railway Company not having done any work or made any improvements upon its line of survey in the state of Nevada. (2) That in the year 1893 the right of way and the grading done on said line of survey within the state of Nevada was assessed by the assessor of Lincoln county, state of Nevada, for state and county taxes, to the Oregon Short Line & Utah Northern Railway Company; that when the said taxes became due the said Oregon Short Line & Utah Northern Railway Company failed and refused to pay said taxes or any part thereof, and the said property was advertised and sold by the sheriff of Lincoln county, and was bid in by the treasurer of Lincoln County for the said county, and the said property has never been redeemed from said sale by the Oregon Short Line & Utah Northern Railway Company or by any one on its behalf, and the tax title to said property is now vested in Lincoln county, for
the use and benefit of said county and the state of Nevada.
5407 (3) That by reason of the fact that the Oregon Short Line
& Utah Northern Railway Company has not complied with the provisions of section 4 of the act of congress of March 3, 1875, concerning rights of way for railroads over public land, that company has forfeited all rights, and privileges it had under its survey reverted to the government in the year 1896. (4) That in the year 1896 the Utah & California Railway Company caused to be surveyed a line of route from the boundary line between the then territory of Utah, through the county of Lincoln, in the State of Nevada, and over the line theretofore surveyed by the Oregon Short Line & Utah Northern Railway Company; that prior to the date of said survey all rights and privileges obtained by the Oregon Short Line & Utah Northern Railway Company by its survey made in the years 1889 and 1890 had been forfeited to the government of the United States by reason of the fact that the said company had failed to comply with the act of congress of March 3, 1875, and the said Utah & California Railway Company had the right to make the survey and locate its line of route over the said line theretofore surveyed and located by the said Oregon Short Line & Utah Northern Railway Company. (5) That certain maps offered in evidence by the Utah, Nevada & California Railroad Company, which had been returned by the honorable commissoiner of the general land office at Washington, under date of September 16, 1899, for correction, and on the 25th day of December, 1899, forwarded by the register, by registered package,
addressed to the Utah, Nevada & California Railroad Com-
5408 pany, Salt Lake City, Utah, were not returned to the United
States land office at Carson City, Nevada, or to the register or receiver thereof, until the 1st day of March, 1901, although the said registered package had been received and receipted for on the 23rd day of November, 1899, by A. C. Cleveland, one of the directors of

the Utah, Nevada & California Railroad Company; and the said company not having made the corrections as called for by the honorable the commissioner's letter above referred to, for more than a year after receiving notice thereof, the said maps should not be filed. (6) That the attempted transfer of the Oregon Short Line & Utah Northern Railway Company to the Utah, Nevada & California Railroad Company is without merit, because at the date of the attempted transfer the said Oregon Short Line & Utah Northern Railway Company had no right or title to, or claim upon, the said right of way in the state of Nevada, that company having forfeited all right and claim to said right of way by failure to comply with the act of congress of March 3, 1875, as hereinbefore mentioned; and the claim that the Utah, Nevada & California Railroad Company is auxiliary to the Oregon Short Line & Utah Northern Railway Company is without merit, in so far as the said franchise is concerned. Our conclusions drawn from the foregoing facts are that the claims of the Oregon Short Line & Utah Northern Railway Company and the Utah, Nevada & California Railroad Company are without merit, the right under which they claim having been forfeited. We therefore recommend that the maps of the line of route as surveyed by them be rejected, and that the maps of the Utah &
5409 California Railway Company, filed in the United States land office at Carson City, state of Nevada, on the 27th day of February, 1897, as corrected, be approved, and that the said company be granted the right of way.

An appeal was taken from the decision of the local land office, and on April 24, 1901, the secretary of the interior rendered the following decision: "The Commissioner of the General Land Office—Sir: With your office letter of the 23rd instant were forwarded articles of incorporation and proofs of organization filed by the Utah & California Railway Company and the Utah, Nevada & California Railway Company, together with maps of location filed by said companies, respectively, and in said letter it is recommended that the articles of incorporation filed by the last-mentioned company be accepted and filed, and that the map of location showing the second section of road, filed by said company, be approved under the provisions of the act of March 3, 1875 (18 Stat. 482), so far as the same crosses surveyed public land. On May 3 and June 7, 1890, this department approved four maps of location filed by the Oregon Short Line & Utah Northern Railway Company, showing its line of route as surveyed and located from the Utah-Nevada boundary line, near the seventh standard parallel, by way of Cloverdale Junction, to a point near Pioche, Nev., a distance of 70.53 miles. Said company at an expense of several hundred thousand dollars graded nearly the entire line of its road as shown upon said maps, constructing tunnels and did other preliminary work to the
5410 occupation and operation of a railroad upon said located line. It became financially embarrassed, and all of its property,

including that above described, was purchased at foreclosure sale by the Oregon Short Line Railroad Company, a corporation organized under the laws of the State of Utah. The work of construction along this line was discontinued in 1890 or 1891, and was not resumed until during the present month, when the Utah, Nevada & California Railroad Company entered upon the construction of the line of road and is now actively proceding therewith from the Utah-Nevada line towards Cloverdale Junction, Nev. The Utah, Nevada & California Railroad Company was incorporated in February, 1899, under the laws of the State of Nevada. Its articles of incorporation and proofs of organization, as submitted, have been examined by your office and found to be satisfactory, and it is shown to be entitled to acquire a right of way and to construct and operate a railroad in the state of Nevada. Its maps of location, filed as before stated, show two sections of located road, beginning at the Utah-Nevada state line, and following the old line located by the Oregon Short Line & Utah Northern Railway Company, to Cloverdale Junction, which maps your office finds fully conform to the regulations governing the filing of such maps. It is proceeding with the construction of the road along said line of location, with the consent of the Oregon Short Line Railroad and the Oregon Short Line & Utah Northern Railway Company. Indeed, it is an auxiliary to these companies.

5411 That the rights secured by the approval of the maps of location of the Oregon Short Line & Utah Northern Railway Company, in May and June 1890, have not become forfeited merely by the failure of that company to construct and operate a railroad along said line of location within the period named in the fourth section of the act of March 3, 1875, supra, is clearly settled by a long line of decisions (see U. S. v. Northern Pac. R. Co., 177 U. S. 435, 20 Sup. Ct. 706, 44 L. Ed. 836 and cases therein cited; also in re Spokane & P. Ry Co., 26 Land Dec. Dep. Int. 224); but, as those claiming under said location have filed written consent to the approval of the maps of location filed by the Utah, Nevada & California Railroad Company, there is no reason why that company's maps may not be approved (In re Montana Ry. Co., 21 Land Dec. Dep. Int. 250; In re Noxon, 27 Land Dec. Dep. Int. 585). I have therefore accepted for filing the articles of incorporation and due proofs of organization submitted by the Utah, Nevada & California Railroad Company, and have approved its map showing the second section of the located road, so far as the same crosses surveyed public lands. As to the unsurveyed lands the maps will be received for information only. The map showing the first section covers only unsurveyed land.

"It but remains to determine the rights of the Utah & California Railway Company. That company was organized under the laws of the state of Utah, and on June 20, 1896, asked approval, under the provisions of the act of March 3, 1875, supra, of four certain

5412 maps of location,—the line shown thereon being identical with that shown upon the approved maps of location filed by the

Oregon Short Line & Utah Northern Railway Company, before referred to; and thereupon said last mentioned company filed a protest against the approval of said maps. The articles of incorporation of the Utah & California Railway Company did not, at the time of the filing of said maps, authorize it to operate a railroad outside of the state of Utah, and it was not until January 2, 1901, that by an amendment of its articles of incorporation it became empowered to construct a line of road in Nevada, even if it could acquire authority so to do from the state of Utah alone. In January of the present year a hearing was ordered by your office at the Carson City, Nev. land office, which resulted in a decision by the register and receiver of that office holding that all rights secured by the approval of the maps of location filed by the Oregon Short Line & Utah Northern Railway Company in 1890 had become forfeited by its failure to construct such line of road within the time named in the act of March 3, 1875. That decision can not be sustained. The land department can not declare and enforce a forfeiture of this sort. Following the decision of said local land officers, the Utah & California Railway Company made an ineffectual attempt to take and hold possession of the grade constructed by the Oregon Short Line & Utah Northern Railway Company. It did some work thereon, but not enough to amount to more than a colorable attempt to construct a rail-
5413 road. At the oral hearing had today in this matter, it was not claimed, nor does it seem that it could be, that there was any authority under the laws of Nevada, before about the middle of last month, for the construction and operation by a Utah corporation of a railroad wholly within the state of Nevada. It is represented that at the time named a law was enacted in that state (St. Nev. 1899, p. 32, c. 20) whereby such authority was given to corporations of other states upon their compliance with certain named conditions, and it is admitted that these conditions were not complied with by the Utah & California Railway Company prior to the 8th inst. No certified copy of this act is presented, nor is a copy presented in any form which entitles it to recognition. This company, therefore, can not even now be held or recognized as entitled to acquire a right of way within the state of Nevada, and this department must refuse to accept for filing its articles of incorporation and proofs of organization. Even if the recent Nevada statute were now before the department, and were shown to go as far as it is claimed, the Utah, Nevada & California Railroad Company would be entitled to precedence, because—First, its application was the first to be presented in perfected form showing a right in the company to acquire a right of way in Nevada; second, it is shown to have actively commenced construction of the line of road before the time when the other company claims to have complied with the recent Nevada statute; third, the obstacle which the outstanding Oregon Short Line & Utah
5414 Northern right of way presents to the granting of another right of way over the same ground has been removed as to the Utah, Nevada & California Company by the written consent of the

holder filed in this proceeding; and fourth: the existing grade and tunnels on this ground, placed there by the Oregon Short Line & Utah Northern Company at enormous cost, give its auxiliary company the stronger claim to recognition as between the two companies, even if they are both willing and able to enter upon the actual construction and operation of a railroad upon said line of location. The Utah & California Railway Company's maps are therefore herewith returned without approval."

5415 Q. Mr. Whittemore, you were advised at Salt Lake by telegraph of that decision about April 5, were you not?

A. Yes.

Q. I mean the local land office decision.

A. Yes.

Q. And thereupon you took the evening train and went down to Uvada?

A. That is right.

Q. You moved pretty rapidly about that time too?

A. Indeed I did.

Q. Because you were expecting the Short Line would be on hand with their people to commence construction?

A. I expected some move would be made on their part.

Q. It is true that you had been advised on or before the time you heard of the decision of the local land office that the Short Line was assembling material for the purpose of building that road?

A. No, I had no knowledge of their assembling material before that time.

Q. Had you not heard of their assembling ties, that they were collecting a train-load of ties or several carloads of ties and of iron, spikes, fastenings and the like?

A. I am not sure whether—yet it seems to me that after our hearing over at Carson City there was some material being assembled at Modena.

Q. Modena is only a very short distance, isn't it, from the end of the line as it was at that time?

A. Yes.

Q. Six or eight miles?

A. Yes—or Uvada.

Q. Uvada?

A. Yes.

Q. That is right at the end of the line?

A. Uvada is right at the end of the line.

5416 Q. Then you took your force of men, and as you went down to Uvada you passed this pile of material right at Uvada, within 5 or 6 hundred feet of the state line, didn't you?

A. My recollection is that they were either at Modena or the Uvada station.

Q. Modena or Uvada station?

A. Yes.

Q. Well, you didn't stop: you then went right on with Deal and all together three or four teams and 13 or 14 men, and when you got across the state line it was only some 500 feet from where the end of the old track was, and you went on to the grade?

A. Yes.

Q. Which you knew was in dispute?

A. Yes.

Q. The Short Line moved their material on to the grade in dispute the next day after you got there, or was it the same day?

A. I think it was the afternoon of the same day that they undertook to move some ties and material, brought them down to the state line, and I protested against their putting that material on the grade over the line.

Q. At that time, Mr. Whittemore, Deal and you had entered upon the grade just inside the Nevada line?

A. Yes.

Q. And you had plowed a furrow across that grade and scraped out some of the dirt for the purpose of preventing the Short Line people from laying their track along on the grade in dispute?

A. Yes: we plowed a furrow through the grade right at the Nevada-Utah line and dug quite a trench there.

Q. And when they came down and started to put the tracks across, you told them no, that you were in possession for the Utah & California road?

A. That is right.

Q. And they claimed the right to the possession of the grade
5417 and went on and occupied it?

A. That is correct: by laying their tracks.

Q. They actually entered upon it and laid a railroad on it?

A. That is right.

Q. Now you had gone down below on the grade and had put some barricades of various sorts across?

A. Yes.

Q. Isn't it true that upon the service of the injunction first issued in this case at Carson City, your people, yourselves, removed those barricades from the grade, including clearing out from some of the cuts, some stumps and logs and rocks that you had thrown in and removed some barbed wire fence from across it?

A. No, after the injunction was served I think we let the Short Line do that.

Q. You let us do it?

A. We had the trouble of putting them in and we gave you the trouble of taking them out.

Q. Do you remember when the Utah, Nevada & California articles of incorporation were first amended so that the corporation took corporate power to build and acquire a railroad in Nevada?

A. I think it was in the latter part of April or May.

Mr. SEVERANCE. What do you speak of now?

Mr. KELLY. The Utah & California.

Q. Then, your contest and occupancy and entry upon the grade was made in the name of the Utah & California, as representing its rights, when in point of fact the company had not taken to itself by its own corporate action a charter right or power to hold a railroad in Nevada?

A. That is correct, yes.

Q. And that corporate action was not taken until after your
5418 entry upon that grade, nor were the amended articles of association of the Utah & California filed in Nevada until after your physical entry upon the grade at that time?

A. That is my recollection.

Q. You had heard prior to April 6th of some preparation and preparatory work by the Short Line for going upon the grade?

A. Yes.

Q. How long before April 6th had you heard of that?

A. I can't tell. I had a man at Uvada for probably 30 days before we started, who kept me advised as to just what was going on.

Q. And he kept you advised from time to time that material was arriving at Uvada—ties, rails, and the like?

A. Yes.

Q. The San Pedro Company was organized March 20; that is, its articles were signed and filed in the county clerk's office that day?

A. Yes; I think the certificate of incorporation is dated March 20, 1901.

Q. Its actual organization, by election of its officers, etc., occurred on March 21st?

A. That is my recollection, yes.

Q. And about the same day you were appointed one of its officers?

A. Yes.

Q. Its articles of association were filed in Nevada about what time?

A. Shortly thereafter; sometime early in April, if I recollect right.

Q. About the 9th of April, wasn't it?

A. Somewhere about there.

Q. What time did the Short Line Company run its construc-
5419 tion train against the barbed-wire fence at the end of the Culverwell Ranch—what date?

A. 4th or 5th of August, I think it was.

Q. At that time the Short Line Company claimed to have and own a right-of-way extending entirely through the Meadow Valley Wash, based upon the old Oregon Short Line surveys and based upon the maps filed by the Utah, Nevada & California, did it not?

A. Yes; across government lands.

Q. It also claimed the benefit of a prior location and prior vote of location by the board of directors as against the San Pedro Company, did it not?

A. Yes.

Q. Those facts were all public and known. Is it not the truth that the Utah, Nevada & California claimed first as assignee under the

old Oregon Short Line and Utah Northern Railway Company's maps?

A. At what time?

Q. All the time.

A. My recollection is that the transfer was made from the Oregon Short Line and Utah Northern to the Utah, Nevada & California some time in April or May, and in going over those papers——

Q. 1901?

A. Yes.

Q. But it also claimed, did it not, that the Utah, Nevada & California board of directors adopted the line of survey delineated upon its maps and profiles, filed in the land office at Carson by it, made on May 9, 1901, and that the vote of adopting that line of survey from Caliente southwesterly was made by the board of directors of the San Pedro Company on its behalf on the 22nd of May? Those
5420 were the claims of the respective parties, were they not?

A. I don't remember the dates, but that is substantially my recollection.

Q. At any rate, the claim was by the Utah, Nevada & California that their board of directors had voted first and made the first adoption?

A. Oh, yes.

Q. That was the gist of the controversy as it existed at that time?

A. Yes.

Q. And the basis of the action of the different people. Isn't it true that while the San Pedro Company was procuring rights-of-way from some of the ranchmen southwesterly from Caliente, that the Short Line was doing the same thing?

A. Yes.

Q. Isn't it true also that the Short Line Company had some parties of workmen down there, staking out work and laying out work and doing some work?

A. Yes.

Q. There were two grading forces, then, somewhere southwesterly from Caliente, at the same time?

A. Yes.

Q. In some places your people encroached on the Short Line right-of-way as claimed by it?

A. Yes.

Q. And in some places the converse was true?

A. That is correct.

Q. In other words, there was a mix-up of the work all the way along down the Meadow Valley Wash?

A. Yes, there was.

Q. Both parties were active in claiming the whole thing, each one claiming for himself; is that right?

A. That is right.

Q. Now, in respect to the rapid survey made by the U. N. & C. people: you knew at that time that the U. N. & C. people

5421 had copies of some old surveys made by the Oregon Short Line and copies of the profiles and maps of the old Oregon Short Line road?

A. Yes, sir.

Q. And their surveying party, which went hastily down, were checking up and did check up that old survey on the ground?

A. That is what they explained later in the testimony, yes. That was the claim made in the testimony given at the hearing.

Q. They didn't pretend to chain that thing except to fix angles and P. C.'s and P. T.'s? (That is what we call point of curve and point of tangent, Mr. Severance.)

Mr. SEVERANCE. I understand.

A. No, but their engineer, though, swore to an affidavit on the map that it represented an actual survey on the ground.

Q. That is not the question. I am asking you what the contention of the parties was.

A. Well, he was the engineer of your party.

Q. Well, he had the old survey right before him, and the field notes?

A. He explained that in his testimony, yes.

Q. And he said he was one of the men who originally did the work?

A. Yes, I think he testified to that.

Q. He claimed that?

A. Yes.

Q. And that was the claim of the parties. Because of that alleged insufficiency of the survey the protest was filed by you for the San Pedro Company?

A. Yes, sir.

Q. Testimony was taken in part in respect of that protest under the land office proceeding?

A. Yes.

Q. But no final decision was ever reached in respect to the matter in the land department nor in the courts?

5422 A. No.

By Mr. SEVERANCE:

Q. It was not reached because the whole matter was put together, the two companies were put together and made a new survey: that was the reason, wasn't it?

A. That subsequently followed.

Q. I say before the thing had come to a decision that happened?

A. Yes, there was an adjustment finally of all the interests, later.

Q. Did the Oregon Short Line Company claim to have acquired a right-of-way across the Culverwell Ranch, where they ran on to your grade—I mean the Utah, Nevada & California—and knocked down your notice and fence?

A. They negotiated with Culverwell or made an application to him, an effort to acquire right-of-way, which he refused to give them, and they brought suit to condemn the right-of-way across.

Q. But they did not acquire any right of way there at the time they smashed down your fence?

A. Well, except so far as the survey across the land, surveying the line, would give them a right. The contention of Mr. Williams was that having surveyed and located across the Culverwell Ranch gave them the right to acquire the right-of-way, which they later endeavored to do by a condemnation suit.

Mr. KELLY. He also claimed at the time that the prior location by the vote of the board of directors of the U. N. & C. gave them a prior right as against the subsequent location made by the vote of
5423 the board of directors of the San Pedro Company?

A. The prior adoption of location.

Mr. KELLY. That is what I mean, and the prior vote.

A. Yes.

Q. Well, the fact is that you had two very lively, energetic railroad companies at work constructing lines from Utah to California, hadn't you?

A. For a while, yes.

Q. And after they had proceeded for a time with that construction they were amalgamated into one company?

A. Yes.

By Mr. KELLY:

Q. From about the time the controversy began, active upon the ground, the right-of-way men of both companies were active securing right-of-way wherever each of them could get it, entirely through the Meadow Valley Wash?

A. Yes.

Q. All the way along?

A. Yes.

Q. You people would get it here and we would get it the next place, and so on?

A. Yes, sir, and at some places we got it through the same——

Q. And some places both had it through the same piece of private ownership.

5424 J. ROSS CLARK.

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Clark, I am not going to examine you at length because we already have your testimony in the record, but there are a few questions I would like to ask you. I have before me an affidavit that you made in June, 1901, to be used in the controversy at Carson, in the Federal Court, and I want to ask you a few questions about

the statements in that affidavit. After reciting that the San Pedro, Los Angeles & Salt Lake road was organized under the laws of Utah and its authority, you stated it was organized in good faith for the purpose of prosecuting the business of acquiring, constructing, owning and operating the lines of railroad which its articles of incorporation authorize it to acquire, prosecute, construct and own. That was correct, wasn't it?

A. It was.

Q. And you also state that there has been paid in, in money and property, to said corporation $2,501,600, and that the remainder of its authorized capital stock is now in the treasury and that its promoters and organizers propose to sell and issue the same as the proceeds thereof may be needed. You recall stating that in the affidavit, Mr. Clark?

A. I do.

Q. And was that correct, that you had paid in in money and property $2,501,600 at that time?

A. It must have been; I took it from the records.

Q. The remainder of the authorized capital, you say, is in
5425 the treasury and you propose to sell it. How much was the remainder of the authorized capital at that time?

A. The authorized capital stock was $25,000,000.

Q. The amount finally issued?

A. Finally issued, yes.

Q. The amount of the authorized capital at that time, June, 1901, was the same amount as it is now?

A. The same amount as it is now.

Q. It is all issued now?

A. It is all issued now.

Q. You further state that since the corporation was organized, it has acquired the terminal system of railroads, testified to by Mr. Whittemore, and then you say that it has also secured lands for terminal facilities in the City of Los Angeles aggregating about one hundred acres in extent and most favorably situated for use for terminal purposes for the main line of railroad which the said corporation proposes to acquire, construct and operate. Where were those terminal facilities, in what part of the city?

A. They are located just adjacent to our present depot and roundhouse.

Q. Do you remember what you paid for those terminals, approximately?

A. It is pretty hard to state now without referring to the records. To the best of my recollection it would be somewhere from $75,000 to $100,000 that we expended for lands for different purposes, land in that adjacent——

Q. About $1,000 an acre that would be. It says here there were 100 acres.

A. Yes. Some of it we paid more than $1,000 an acre for and for some of it we paid less. Probably about $100,000.

Q. You also state in the affidavit that since the organiza-
5426 tion of the company it has secured terminal facilities on the shores of the Bay of San Pedro, on the Pacific Ocean, amounting in all to about one hundred acres, and also three miles of the water front of said harbor, giving to the said corporation much the larger harbor water front owned by any railroad upon said harbor of San Pedro. How much did you pay for that 100 acres of land and the three miles of water front, do you remember?

A. I think that is a little bit misleading. When we bought the Los Angeles Terminal Railway Company we acquired all of those lands.

Q. That was the property of the Los Angeles Terminal Railway Company?

A. Yes; about 1200 acres all told, I think.

Q. That wasn't in addition to the property of the Los Angeles Terminal, but was part of it?

A. Part of it. I don't remember that we bought any additional land down there. We may have bought some few odds and ends that were owned by other people, that had formerly been sold by the old company; I think that is all.

Q. In your affidavit you also state that since the organization of the corporation there has been expended in carrying out the purposes for which it was organized more than $500,000 in cash, in addition to the amount expended in purchasing the said property of said Los Angeles Terminal Railway Company; and then you speak further on of having purchased a lot of steel rails, etc.

A. Cars.

Q. And cars.

A. Steam shovel, I think.

Q. Yes, sir. And some right-of-way in California. Did that $500,000 include these steel rails and the right-of-way that you secured in California?

5427 A. Whatever we had purchased up to that time; these lands adjacent to our depot; the right-of-way that we had secured at that time was on the line between here and Riverside, that is, from Hobart Junction east, and whatever cars we had paid for. We had contracted for quite a large amount, I think about eight thousand tons, of steel. Some portion of it had been delivered at that time, not all of it.

Q. In this affidavit you further state as one of the things you have done: That the said company has adopted plans and specifications for the laying of a main track line between Salt Lake City and the said Bay of San Pedro of rails to weight not less than 75 pounds per yard, upon a thoroughly well ballasted and constructed track, so that its said line when completed shall make and constitute a high-speed through line between the said City of Salt Lake and the Bay of San Pedro, and affiant believes that the said plans and specifications for construction so adopted will result in the said corporation, when its said line is completed, possessing, owning and operating the best con-

structed and safest line of railroad existing west of the Rocky Mountains." Now, did the line that you had adopted these plans for at that time provide for the construction of a line over the Cajon pass or through that region, or did your plans at that time contemplate a lease?

A. No, it provided for the construction of a line over the Cajon.

Q. Did those plans and specifications which you mention in your affidavit contemplate a through line to be constructed by you to Salt Lake City?

A. I think so.

5428 Q. You further state that you propose to reconstruct or relay the line between Los Angeles and San Pedro with heavy rails and that you have completed reballasting twenty-two miles and laid about five miles of new track. You remember those facts?

A. I remember. That is correct, yes. That line between here and San Pedro was entirely rebuilt, the banks widened, and new rails and ballast put down.

Q. You further state that "the corporation has, through its surveyors, surveyed 110 miles of its proposed main line of road extending from the City of Los Angeles toward the City of Salt Lake, and has definitely located 90 miles of the same, and has secured nearly all of the right-of-way for 30 miles thereof, extending from the City of Los Angeles eastward toward said City of Salt Lake, and is now engaged in securing said right-of-way with all convenient dispatch, and will continue the work of securing the same." Where did that 110 miles take you?

A. It would be about 60 miles beyond Riverside, some point between Riverside and Barstow.

Q. Did it take you over the Cajon pass?

A. Yes. No—60 miles?

Q. You said you had surveyed 110 miles and definitely located 90 from Los Angeles towards Salt Lake.

A. Ninety miles would just about take us to the summit of the Cajon pass.

Q. You remember this statement which you made?

A. Yes.

Q. That is an accurate statement of the facts as they existed at that time?

A. As they existed at that time, yes.

Q. Where was the 30 miles of right-of-way? Was that immediately out of Los Angeles?

5429 A. Commencing at Hobart Junction; three miles below our passenger station here, running east.

Mr. KELLY. Not in a body, but different places?

WITNESS. Different places.

Q. You also said that "said corporation has also purchased 50 ballast cars and one steam shovel and unloader, and in addition thereto several hundred flat cars, and it has actually begun the work of constructing upon the new portion of its main line extending between

the said city of Los Angeles and the said City of Salt Lake, Utah, and proposes continuing the construction of the same as fast as the said line is located and the right of way therefor secured." Did that represent the facts as they existed at that time?

A. At that time, yes.

Q. "That it has also ordered about 300,000 ties, a large number of which have been delivered, and the same are now ready to be used, and some of them have been used, in the construction of its said line of road, and said corporation is engaged in placing, almost daily, orders for material and equipment for its said proposed line of road, including rails, ties, etc." Was that true?

A. It was.

Q. Then follows the statement: "That the surveyors of said corporation have since the same was organized, and up to the present date" (which is the 21st of June, 1900) "surveyed about 140 miles of the line of the same west of the City of Salt Lake and extending through a portion of Lincoln County, Nevada, and that said corporation now has in the field and actively engaged in carrying out the work of surveying and locating its said proposed line four complete surveying parties." Were those statements correct?

A. They were.

5430 Q. "That the stockholders of said corporation are men of large means, and affiant says that he verily believes that they have all entered upon the organization of the prosecution of the purposes for which said corporation was organized in good faith and with an honest intention of completing the acquisition and construction of the said main line of railroad and the branch lines thereof which the said articles of incorporation authorize the said corporation to acquire, construct and operate." That is true, isn't it?

A. That is true.

Q. "That affiant as the second vice-president of said corporation has been put in immediate charge and supervision of the work of acquiring, constructing and equipping the lines of railway for which said corporation is organized to acquire, construct and equip, and affiant has therefore intimate and thorough knowledge of the matters and things contained in this affidavit." That was so?

A. That was correct.

Q. That affidavit was made, wasn't it, Mr. Clark, to be used in the controversy at Carson City in this suit which has been mentioned by Mr. Whittemore?

A. Yes: that was evidently the purpose.

Mr. KELLY. And was used.

Q. And was used, I assume?

A. Yes.

Q. That is, the case of the Utah, Nevada and California Railway Company against the San Pedro, Los Angeles and Salt Lake Railroad Company and others pending in the Circuit Court of the United States for the District of Nevada?

A. Yes.

Q. Complainant's Exhibit 170 being the original affidavit.

5431 Cross-examination by Mr. KELLY:

Q. The affidavit describes the use of the $500,000 in buying construction material and all that. That was the work you were doing in getting ready for the building of the line, commencing at this end?

A. That is correct.

Q. When your company had acquired the Los Angeles Terminal Railway Company and its properties, it embraced how much railroad?

A. About 51 miles. From Los Angeles to East San Pedro 27 miles; Los Angeles to Pasadena and Millard Canyon 15 miles; from Glendale Junction to Verdugo Park 9 miles—making 51 miles all told.

Q. And the road from San Pedro to Los Angeles had to be reconstructed, rebuilt, relaid?

A. That was rebuilt.

Q. The other line, eastward from Hobart Junction, was to be constructed, and it was with reference to that construction that you were buying ties and iron and material, for the commencement of the construction of the road from Los Angeles eastwardly?

A. That was the immediate plan.

Q. And that was the immediate purpose for the purchase of these materials?

A. Yes; the purchase of the ties, rail, and equipment.

Q. The Terminal Company had no steam shovels or no sufficient construction material, such as ballast cars and flat cars and iron handlers—I don't know what you call them?

A. They had no such property; had very little equipment when we took it over.

Q. You had to get those to get the plan in working order?

5432 A. To do any building or rebuilding, yes.

Q. The work of rail-laying on the line from Hobart Junction eastwardly began about what time?

A. I don't remember the date exactly. It was sometime in the summer or fall of 1901.

Q. At the time of the making of the affidavit there had been no track laid east from Hobart Junction?

A. Not at that time, no.

5433 T. E. GIBBON, (2)

being duly sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Gibbon, you are the same T. E. Gibbon who was mentioned in the testimony, I assume, as being connected with the organization of the San Pedro, Los Angeles & Salt Lake Railroad?

A. I am.

Q. I don't want to examine you very fully, as I asked you a lot of questions, you will remember, once before, on the hearing here, and your testimony has gone into the record by consent. Were you in Salt Lake City in the fall of 1900, with Senator Clark?

A. I was.

Q. Do you remember a dinner at the Alta Club, at which Senator Clark made a speech to the gentlemen there present, prominent citizens of Salt Lake, with reference to the proposed Salt Lake road?

A. I remember a dinner at Salt Lake at which Senator Clark made a speech to a number of Salt Lake gentlemen who were present.

Q. Do you remember whether that was a public statement and published in the newspapers?

A. Yes, sir; the morning papers of the next day, I believe.

Q. They published the speech of Senator Clark?

A. Yes.

Q. Do you recall whether in that speech Senator Clark stated, in substance, that the proposed railroad he and his associates were about to construct would be an independent line of road, not affiliated with existing lines?

5434 Mr. KELLY. That is objected to as incompetent.

A. I am very sure that he did make that statement, in substance.

Q. When did you first become associated with Senator Clark in this enterprise?

A. I think as early as 1899 was my first meeting with Senator Clark. If I am wrong in that Mr. Ross Clark will correct me.

Mr. Ross CLARK. That is about right.

WITNESS. At that time I was vice-president and general attorney of the Los Angeles Terminal Railway Company, which owned some railroad property in Southern California and a line extending from Los Angeles to San Pedro harbor and quite large holdings on the harbor at that place, in real estate. My stockholders, who were St. Louis people principally, had asked me long before that to do anything I could toward promoting a line of railroad to Salt Lake City which would connect with and use their terminals in Los Angeles and on the harbor and their lines in Southern California. I had seen numbers of people in fact during a period of several years in the effort to promote the building of this line from Los Angeles to Salt Lake, to take over and use the terminal properties of these St. Louis people. These properties were held by a California corporation known as the Los Angeles Terminal Railway Company, which I had organized for them in 1891. In pursuing this effort to organize a corporation for that purpose and interest capital, I first brought the matter to the attention of Mr. Ross Clark, who resided in Los An-

5435 geles and whose office adjoined mine in the building we had offices in. Knowing that he was looking for investments and that his brother was also a very wealthy man and looking for investments in Southern California, and had investments here, through Mr. Ross Clark the matter was brought to the attention of his brother

and through him, later on, I met Senator Clark and we took up the matter of his becoming interested in a company which would build a line of railroad from Los Angeles to Salt Lake City, Utah, and would take over the properties owned by the St. Louis people or by the Los Angeles Terminal Railway Company, which the St. Louis people were the stockholders of. That occurred, I think, in 1899. As I remember, those negotiations were in the early part of 1899. My first conversation was with Mr. Ross Clark and later with the Senator.

Q. Had the matter taken definite shape by the autumn of 1900?

A. Yes, such shape that the Senator had determined to take the leading part in organizing the proposed corporation to build the line of road—at first to take over the properties of the Los Angeles Terminal Railway Company in this state, in Southern California, its terminals, the principal of which were terminals in the City of Los Angeles and on San Pedro harbor and to build the line of railroad from Los Angeles to Salt Lake City.

Q. Do you remember negotiations conducted by yourself, Mr. Gibbon, in Salt Lake City, with the city council, to secure a concession to your company of what is called Pioneer Square there?

A. I do.

Q. When did those take place, as nearly as you can recollect?

5436 A. I think in the autumn of 1900 and the earlier part of 1901.

Q. Who were the gentlemen associated with you at that time in this proposed railroad, outside of Senator Clark?

A. The principal stockholder, of course, was Senator Clark; that is, it was proposed that he should be in the company we proposed to organize. His brother, Mr. Ross Clark, was to be one of the important interests. Mr. R. C. Kerens of St. Louis and the crowd that Mr. Kerens had originally gotten together to form the Los Angeles Terminal Railway Company. Those men were Mr. George B. Leighton, Mr. Bemis, Mr. Charles Clark, Mr. Van Blarcom, Governor Francis, and a number of other gentlemen whose names I do not recall just now.

Q. Senator Thomas Kearns of Salt Lake City?

A. Yes, previous to the formation of the corporation for building the Salt Lake line from Los Angeles to Salt Lake; but after Senator Clark had determined to go into it, Senator Kearns of Salt Lake City, and his partner, Mr. David Keith, purchased some stock in the Los Angeles Terminal Railway Company from Mr. R. C. Kerens, and determined to take, I believe, a prominent part in the organization of the new company to build the line from Los Angeles to Salt Lake City.

Q. At the time you had these negotiations with reference to securing this Pioneer Square, what authority did you have to represent these promoters?

A. I had been authorized by all of the gentlemen interested to proceed with the matter of securing terminals in Salt Lake City, for which purpose it was proposed to use this square, and with any

5437 other matter relating to the organization of the company and to secure properties which it might need.

Q. Did you make any representations on behalf of your associates or yourself to the city council in connection with that application, as to the intention of your associates and yourself to construct an independent line of road?

A. I did; I represented to the city council of the city of Salt Lake, and also to other parties there with whom I was brought in contact, prominent citizens, etc., that it was the intention of the people whom I represented, principally the gentlemen I have named, to organize a corporation for the purpose of constructing an independent line of railroad from the city of Salt Lake to the city of Los Angeles or between those two cities.

Q. By an independent line you mean one not affiliated with any other?

A. While it might be affiliated with others in traffic matters, yet not in any sense under the control of any existing line.

Q. And that was the intention of the promoters?

A. That was the intention of the promoters, as I understood it.

Q. The Southern Pacific Company was here at that time and had been for many years?

A. Oh, yes, certainly.

Q. And had a line of road leading up to Ogden?

A. Yes.

Q. Was it the intention of these gentlemen whom you have mentioned to build a line which should be a competing line with the Southern Pacific?

A. It was, as expressed by them and by myself. I might say
5438 that the original conception of the line was the outgrowth of efforts which I had made for years to establish an independent line of railroad from Los Angeles to eastern connections. It was a project that I had been interested in for a great many years in connection with St. Louis people; in fact the Los Angeles Terminal Railway Company was originally incorporated with the idea of securing terminal facilities in the city of Los Angeles which were to be used by the Union Pacific which at that time, it was supposed, was to build a line in here.

Mr. KELLY. An ordinance was passed and approved naming the Union Pacific Railroad Company as the beneficiary?

WITNESS. Yes, the ordinance which created us here named the Union Pacific as a road which would have a right to use that franchise.

Q. How long ago was that?

A. That was the latter part of 1890 or the early part of 1891.

Q. From the latter part of 1890 until the early part of 1891, had anything been done by the Union Pacific Railroad Company toward building a line in here, as far as you know?

A. Why, about that time they were building—certainly were surveying down through Nevada, and about that time they built the line,

I think, south of Milford, and did some grading and tunnel work in the State of Nevada, which was intended to be used by that line that was projected to Los Angeles.

Q. That was 1889 or 1890, according to the testimony, when the tunnel work was done in Nevada. After they did that work in Nevada, did the Union Pacific interests, so far as you know, make any move toward building a line to Los Angeles from Salt Lake until after your project was publicly announced?

5439 A. None that I know of, and I think I would be entirely safe in saying none. The Adams control of the Union Pacific went out at that time, and we heard nothing about any further proposition to extend the line to Los Angeles until after we organized the San Pedro, Los Angeles & Salt Lake Railroad Company, in 1901.

Q. You mean the San Pedro, Los Angeles & Salt Lake Railroad men got their scheme under way?

A. Yes.

Q. You don't mean the corporate organization?

A. I don't know that we heard anything about it until after the corporate organization was perfected. I don't now recall that we did. Possibly they had shown some disposition before that time, but it was about that time I will say. Certainly there was nothing heard about it until after the announcement was made that the present Los Angeles road would be organized.

Q. Certainly nothing until after the speech of Senator Clark at Salt Lake City?

A. Nothing. I may say in that connection, Mr. Severance—it may have some bearing on the matter—that in 1897, I think it was ('96 or '97) I met Mr. Harriman in Seattle, when he was just about to embark upon his rather well-known trip to Alaska, to accomplish which, you may recall, he chartered a steamer and took a company of scientists to Alaska, and at the request of the St. Louis people I talked with him about the Union Pacific extending its line to Los Angeles, but it did not result in any definite arrangement or anything definite being decided upon.

Q. What year did you say that was?

5440 A. I think it was in 1896 or 1897. It can very easily be fixed by a reference to the newspapers or to the book that was subsequently issued about the Harriman expedition to Alaska. I have the book in my library.

Q. Was it after Mr. Harriman became chairman of the board?

A. It was after Mr. Harriman had perfected the organization of the Union Pacific.

Q. And had become the dominating spirit in that property?

A. Yes.

Q. You wouldn't undertake to fix the date any more accurately than that?

A. No.

Mr. KELLY. Mr. Harriman didn't come into the Union Pacific Railroad Company until 1898—February 1, 1899.

WITNESS. 1899, possibly, then. I can fix the date absolutely by reference to a copy of the book which I happen to have in my library. I was directed by wire from the St. Louis people to meet Mr. Harriman in Seattle when he was about to embark upon this trip to Alaska, and see if any arrangement could be made with him for building this line between Salt Lake City and Los Angeles, using the Los Angeles Terminal Railway properties. I did meet him and took the matter up with him, but there was no result from the conference.

Q. And that was after he had become the dominating factor in the Union Pacific?

A. Oh, yes.

Q. Irrespective of whatever the exact date might have been?

A. Yes.

(No cross-examination.)

An adjournment was here taken until Thursday, June 10, 1909, at 10:30 A. M., at Room 515, Custom House, Bowling Green, New York City.

5441 ROOM 515, CUSTOM HOUSE, NEW YORK, N. Y.,
Thursday, June 10, 1909, 10:30 A. M.

The hearing was resumed before Hon. Sylvester G. Williams, Special Examiner, at the above time and place.

Present: on behalf of the Complainant, Mr. C. A. Severance, Mr. G. E. Huested; on behalf of the Defendants, Mr. R. S. Lovett.

T. H. ROSSBOTTOM,

being sworn as a witness on behalf of the Complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Rossbottom, what is your business?

A. I am assistant to the vice-president and secretary of the Panama Railroad Company.

Q. How long have you been with the Panama Railroad Company?

A. Since 1887.

Q. In your position are you the custodian of their records?

A. I am.

Q. How long have you occupied the position of secretary of the Company.

A. I should judge about six years.

Q. You are familiar with the way their records are kept?

A. I am.

Q. Are they so kept as to show the tonnage moving between New York and San Francisco, and *vice versa?*

A. They are.

Q. Have you made up a statement of that tonnage for a period of ten years, from 1898 to 1908, at my request?

5442 A. I have made up such a statement taken from our annual reports.

Q. Is that statement correct?

A. It is correct.

Paper marked Complainant's Exhibit 177 (Rossbottom).

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 177.

Complainant's Exhibit 177 (Rossbottom) is as follows:

COMPLAINANT'S EXHIBIT 177. (Rossbottom.)

Tonnage from New York to San Francisco and vice versa from 1898 to 1908 Inc.

	N. Y. to S. F.	S. F. to N. Y.
1898	29,869	12,723
1899	35,919	19,980
1900	33,555	30,624
1901	43,455	42,086
1902	32,659	30,590
1903	35,823	28,882
1904	39,150	30,410
1905	31,843	26,532
1906	25,914	24,937
1907	26,944	15,285
1908	23,238	15,162
Total	358,395	277,211

Q. I notice, Mr. Rossbottom, that during the years 1900 and 1901 there seems to have been a substantial increase in the amount of tonnage. What was the reason, if you know, for that?

5443 A. That was due practically to the fact that the Panama Railroad Company was operating its own line on the Pacific coast.

Q. During what period did it operate its own line on the Pacific coast?

A. From the expiration of the contract with the Pacific Mail Steamship Company in 1893. We operated a steamship line in connection with the North American Navigation Company up to the time the contract of December 16, 1895, was in operation, or was made effective. Then, when the contract of 1895 expired, in 1900, we operated a steamship line of our own on the Pacific coast until the contract of 1902 was made effective.

Q. Since the contract of 1902 was made, in connection with what line have you operated so far as business between here and California points is concerned?

A. With the Pacific Mail Steamship Company.

Q. Exclusively?

A. Exclusively.

Q. The testimony in San Francisco showed that there were two other lines of steamers running from San Francisco to Panama—

one a German line, which I believe was called the Kosmos Line, and the other, a French line, with a somewhat irregular service. Do you handle any business in connection with those lines to San Francisco?

A. No; we have no relations whatever with the French line to which you refer, but we have a through billing arrangement with the Kosmos Line; but, of course, we can not take San Francisco cargo in those steamers, because they are operated under a foreign flag.

Q. You can not ship goods from here to San Francisco,
5444 moved from Panama to San Francisco in other than American bottoms, can you?

A. No, sir.

Q. Is there any other line of boats running there, except the Pacific Mail?

A. There is none of American register.

Q. That is what I mean—American register. So that all your business is necessarily interchanged with that at San Francisco at present?

A. That is right.

Q. And has been for how long? Ever since you took off your own line?

A. Ever since we took off our own line.

Q. We have in evidence a contract between the Panama Railroad Company and the Pacific Mail, made in 1902. Was that canceled?

A. It was.

Q. When?

A. The notice was issued on January 12, 1905.

Q. Notice was given by whom?

A. By the Panama Railroad Company, on January 12, 1905, to terminate the agreement six months from that date.

Q. What was that date?

A. January 12, 1905.

Q. So that it terminated it on the 12th of July, 1905?

A. That is right.

Q. Since the 12th of July, 1905, upon what basis have you been doing business with the Pacific Mail?

A. Practically on the basis of the contract of 1902, with the exception that the exclusive privilege given to the Pacific Mail to operate between San Francisco and Panama on through business was canceled. In other words, we are continuing under existing practices.

Q. That exclusive privilege was canceled, but, as I under-
5445 stand you, there is no other line?

A. There is no other line there.

Q. Has there been any change in the actual relations of the companies to each other, or in the movement of traffic?

A. No.

Q. So that the business up to the present time has been done upon the terms stated in the contract of 1902?

A. That is correct.

Q. Have you received any notice from the Pacific Mail Steamship Company with reference to the continuance of the tentative arrangement under which you have been operating since the contract was canceled?

A. We have.

Q. Have you that with you?

A. I have.

Q. Will you produce it?

A. It is a letter from the vice-president of the Pacific Mail Steamship Company, Mr. R. P. Schwerin, dated "New York, February 18."

Q. What year?

A. 1909.

Q. Have you the notice there?

A. I have.

Q. Can you pick it out?

Witness hands paper to Mr. Severance, which was marked Complainant's Exhibit 178 (Rossbottom).

Q. I show you Complainant's Exhibit 178. I will ask you if this is the notice to which you just referred?

A. That is.

Mr. SEVERANCE: I offer in evidence Complainant's Exhibit 178 (Rossbottom).

5446 Complainant's Exhibit 178 (Rossbottom) is as follows:

COMPLAINANT'S EXHIBIT 178. (Rossbottom)

In Reply Refer to No.....

Pacific Mail Steamship Company.
Portland & Asiatic Steamship Company.
San Francisco & Portland Steamship Company.

Office of

R. P. SCHWERIN,

Vice-President and General Manager

Third Floor—Flood Building.

120 BROADWAY,
New York, February 18, 1909.

E. A. DRAKE, Esq.,
Vice-Pres., Panama R. R. Co.,
24 State Street, New York.

DEAR SIR: Herewith acknowledge your letter of February 15th, and in compliance with your request I will instruct the Freight Traffic Manager of the Pacific Mail Steamship Company in San Francisco to publish an all around east-bound rate of 40c per 100 lbs., or $8.00 per ton of 2000 lbs.

I must on this occasion put on record the fact that while the Pacific Mail Steamship Company has in every possible way tried

to comply with all the terms of the contract which was abrogated by the President of the United States, and which was continued as a working agreement with the understanding that the Panama Railroad Company would not give the privileges of through billing via the Isthmus to other lines unless they published a schedule and performed such schedule, the same has not been strictly adhered
5447 to by the Panama Railroad Company, and therefore this contract, which was extended except so far as the exclusive through billing privileges were concerned, might be said to have long ago ceased to exist so far as the Pacific Mail Steamship Company's obligations to comply therewith are concerned, through the nonperformance of the strict understanding on our part as to the obligations of the Panama Railroad Company.

When the contract was originally made it was never contemplated, except in cases of extreme measures or in traffic warfare, that the rates would go as low as 40¢ per 100 lbs., in fact these rates were considered minimum and unremunerative rates, and were only put in the contract to afford a basis of further mutual understanding in case a rate war should be inaugurated. Such rates, you know, are absolutely unremunerative, and no line could possibly exist upon this route whose revenue was obtainable from such remuneration.

The through rate at $8.00 per ton divides on the basis of $4.00 to the Panama Railroad Company and $4.00 to the Pacific Mail Steamship Company. From the $4.00 accruing to the Pacific Mail Steamship Company, 80¢ must be paid to the Panama Railroad Company for terminal charges and 10¢ for cranage, a total of 90¢, leaving a balance of $3.10 for the haul San Francisco to La Boca. Taking into consideration the cost of loading at San Francisco of 50¢ per ton and discharge at La Boca of 25¢, or a total of 75¢, the net balance accruing for the haul of over 3000 miles would leave the Pacific Mail Steamship Company a net result of $2.35 for the haul of over 3000 miles.

5448 As I stated to the Board of Directors of the Panama Railroad Company in Washington, I desire to now put on record a six months' notice from February 12th, 1909, that we will no longer be governed by the terms of this working agreement. I had hoped to receive before this some advice as to the decision of the Board of Directors of the Panama Railroad Company in regard to the proposition which I placed before them. Will you kindly advise me in regard to this at your earliest convenience?

Yours truly,

R. P. SCHWERIN,
Vice Pres. & Gen. Mgr.

S-A

Q. This notice is for cancellation six months from February 12th. That will be August 12th?

A. August 12th, 1909.

Q. When the Pacific Mail Steamship Company go out of this joint arrangement on the 12th of August, how can you handle traffic between here and San Francisco, if at all?

A. Unless we are able to induce some other American line to go into that business between Panama and San Francisco, the Government, who determines the policy of the Panama Railroad, will have to decide whether or not to establish a line of its own.

Q. Is there any way to continue the services except by the
5449 establishment of a new line—that is, of a line belonging to the railroad company, or inducing some other line to go in there?

A. No, there is not.

Q. There is no line there now?

A. There is no line there now.

Q. At the end of this letter Mr. Schwerin said: "I had hoped to receive before this some advice as to the decision of the Board of Directors of the Panama Railroad Company in regard to the proposition which I placed before them. Will you kindly advise me in regard to this at your earliest convenience?" What was that proposition?

A. Mr. Schwerin's proposition——

Mr. LOVETT. It is in writing, I think.

Q. Is it in writing?

Mr. LOVETT. It must be.

A. I don't think it is. He made a verbal proposition to the Board of Directors at the meeting in Washington.

Q. That is what he speaks of. He says: "I stated to the Board of Directors." As I understand you, it was not in writing; it was stated to the board of directors?

A. I do not remember that it was in writing. I know it was made verbally, and I don't think it was confirmed in writing.

Q. What was it?

A. The proposition was that Mr. Schwerin would establish a direct line of steamers running between Panama and San Francisco, if the Panama Railroad, instead of giving him fifty per cent of the through rate as his proportion, would guarantee to him a net return of $5 per ton.

Q. By "net return" you mean over and above loading charges?
5450 A. Over and above wharfage and cranage charges at La Boca.

Q. La Boca is the port of Panama, is it not, on the Zone?

A. It is now called Balboa, by order of the Secretary of War. It is the locality where our piers at Panama are situated.

Q. It is on the Canal zone?

A. On the Canal zone.

Q. On the Pacific side?

A. On the Pacific side.

Q. Is that the point at which business is interchanged with the Panama Railroad Company?

A. It is.

Q. Interchanged by all lines with the Panama Railroad Company?
A. Yes.
Q. That is the Pacific terminus of the Panama Railroad Company?
A. That is the Pacific terminus of the Panama Railroad Company.
Q. Have you with you the contract of December 16, 1895, which you mentioned?
A. I have. That is the original.
Pamphlet marked Complainant's Exhibit 179 (Rossbottom).
Q. I show you Complainant's Exhibit 179. Is that the contract you have mentioned?
A. That is the contract.
Q. This is a copy, isn't it?
A. This is a copy.
Q. The original has been produced in court?
A. Yes.
Mr. SEVERANCE. Is it stipulated that this copy may be used in lieu of the original, with the same force and effect?
Mr. LOVETT. Yes.
Mr. SEVERANCE. I offer Complainant's Exhibit 179 (Rossbottom) in evidence.
Complainant's Exhibit 179 (Rossbottom) is as follows:

5451 COMPLAINANT'S EXHIBIT 179. (Rossbottom.)

"THE PANAMA ROUTE"

Contract Between The Panama Railroad Company and The Pacific Mail Steamship Company.

Dated, December 16, 1895.

This agreement, made this sixteenth day of December, in the year one thousand eight hundred and ninety-five, between the Panama Railroad Company, duly chartered and organized under the Laws of the State of New York, and hereinafter called the Railroad Company, party of the first part, and the Pacific Mail Steamship Company, also duly chartered and organized under the laws of said State, and hereinafter called the Steamship Company, party of the second part, witnesseth:

Whereas, the said Railroad Company is now operating its railroad across the Isthmus of Panama, and running a line of steamers from New York to Colon on the Atlantic Ocean; and

Whereas, the said Steamship Company is now running a regular line of steamers on the Pacific Ocean between San Francisco and Panama and intermediate ports on the Central American and Mexican coast; and

Whereas, both Companies are interested in and desirous of hereby establishing conditions under which they may carry on regularly and without interruption the business of transportation between

5452 San Francisco and New York, and the said intermediate ports, with the intent hereby declared by both companies to develop to the fullest possible extent the traffic via the Isthmus of Panama, and to prevent the diversion of the legitimate business of said Isthmus to other routes.

Now, therefore, in consideration of these premises, and with the intention of so securing to both of the parties hereto the advantages of a contract of the general character above set forth for a term of years, and in consideration of the sum of one dollar by each of the parties hereto to the other paid before the delivery hereof, it is mutually covenanted and agreed by and between the respective parties hereto, and their respective successors, assigns and legal representatives, as follows, that is to say:

ARTICLE I.

In consideration of the execution of this contract by the Railroad Company, and in consideration of the sum of one dollar to each in hand paid by the other, the receipt of which is hereby acknowledged, it is mutually agreed between the parties hereto that the certain Agreement between them, dated October 1, 1872, which is the subject of a certain suit in equity pending in the Supreme Court of the State of New York, and all rights, privileges, covenants and interests under said Agreement and under any other contracts between the parties hereto prior to the date of these presents, shall be and are hereby terminated, canceled and brought to an end on the 16th day of December, 1898, subject only to the subsequent enforce-
5453 ment of any claims whi may arise under said Agreement or contracts between the d of this contract and the said sixteenth day of December, 1898, which claims, if any, are to be enforceable as well after as before said last-mentioned date; it is the explicit and unqualified understanding and agreement of the parties hereto that the said Agreement of October 1, 1872, shall so terminate (subject as aforesaid), irrespective of any other provision of this Agreement or the fulfillment or nonfulfillment of this Agreement by the Railroad Company, and that the Railroad Company only enters into this Agreement in consideration of the express and unqualified provisions of this article, which are not made dependent upon any other provision of this Agreement; and provided, that until said sixteenth day of December, 1898, the parties hereto shall be governed, so far as said contract of October 1, 1872, is concerned, by the decision of the General Term of the Supreme Court of the State of New York, entered in respect of said contract on the fifteenth day of March, 1895, and that until said sixteenth day of December, 1898, the rights and interests of the said parties under said Agreement of October 1, 1872, shall be as defined by said General Term, and not as defined by any previous order or judgment of said Court.

And it is for like consideration mutually agreed that on the sixteenth day of December, 1898 (subject only to the subsequent con-

tinuance and final determination of proceedings (if any such there should be), instituted before said sixteenth day of December, 1898,
for the breach or violation of such judgments or injunctions
5454 between the date of this agreement and said sixteenth day of
December, 1898), the said judgment of the said General Term of the Supreme Court and all and any judgments in said action shall be vacated and said action dismissed, and all injunctions, orders and directions thereunder vacated, and all bonds and undertakings therein discharged and released; and the appeals to the Court of Appeals vacated, all without costs to either party as against the other.

Simultaneously with the execution of this Agreement, the Railroad Company and the Steamship Company have exchanged stipulations postponing until December 16th, 1898, the argument of the appeals taken to the Court of Appeals by each of said companies from the said judgments of the Supreme Court at General Term, and then withdrawing and dismissing said appeals, without costs to either party as against the other, and the Steamship Company has caused to be executed by its attorneys and delivered to the Railroad Company stipulations in accordance with the preceding paragraph of this article of this Agreement.

It is further mutually agreed for like consideration that each party hereby releases the other from any and all claims, demands, losses, damages and causes of action (not heretofore reduced to judgment) arising prior to the date of these presents, which either has, or may have, for, upon or by reason of the making of said Agreement of October 1, 1872, or any alleged violation thereof by either party thereto.

Article II.

The Railroad Company hereby concedes to the Steamship
5455 Company (so far as its charter and its contract with the
Columbian Government permit) the exclusive privilege of through billing at any and all ports on the Pacific Ocean north of Panama, under and during the life of this contract as hereinafter provided, in connection with the Railroad Company, and each and every one of its Atlantic connecting lines.

And the Railroad Company agrees (within the scope of its powers as above defined, and as far as it consistently can with its own safety and protection and its duties as a common carrier) to co-operate with the Steamship Company in making such rates, and in generally taking such measures as will afford to the Steamship Company protection against interference or competition by other steamship lines with the traffic hereby conceded to the Steamship Company north of Panama.

Article III.

Section "A."—There shall be maintained by the Steamship Company a through line of steamers each way between Panama and San

Francisco, and such intermediate ports at which the Steamship Company now calls, as well as any other intermediate ports whose traffic shall develop sufficiently to warrant making them ports of call; the Steamship Company shall, subject to the perils of the seas, make at least three trips each way per month between Panama and San Francisco, and the steamers shall be those now running on the Steamship Company's line between said ports, or others of approximately equal capacity and speed. In case any of the steamers engaged in the above service be lost or destroyed, the Steamship Company
5456 agrees to promptly replace such lost or disabled vessel or vessels by another or others of approximately equal capacity and speed, so far as necessary to maintain the service as above prescribed, namely, a through line of steamers between Panama and San Francisco, and the intermediate ports as aforesaid, and the three trips each way per month as aforesaid by said present steamers or others of approximately equal capacity and speed.

SECTION "B."—The Railroad Company shall maintain a line of steamers each way between New York and Colon, and it shall, subject to the perils of the sea, make at least three trips each way per month between New York and Colon, and the steamers shall be those now running on the Railroad Company's Columbian Line between said ports, or others of approximately equal capacity and speed. In case any of the steamers engaged in the above service be lost or destroyed, the Railroad Company agrees to promptly replace such lost or disabled vessel or vessels by another or others of approximately equal capacity and speed, so far as necessary to maintain the service as above prescribed, namely, a through line of steamers between New York and Colon as aforesaid, and the three trips each way per month as aforesaid by said present steamers or others of approximately equal capacity and speed.

SECTION "C."—These two steamship lines, connecting respectively at Panama and Colon with the Panama Railroad, shall constitute, with said railroad, what shall be hereafter called the "Panama Route" between New York and San Francisco.

5457 ARTICLE IV.

The gross earnings of the Panama Route on all freight business, including specie or treasure, between New York and San Francisco, carried over the Isthmus by the said Panama Route, shall be divided as follows:

Fifty-five (55) per cent. to the Railroad Company for the service at and between New York and Panama, and

Forty-five (45) per cent. to the Steamship Company, for its service between Panama and San Francisco.

The earnings of said "Panama Route" from passengers carried between New York and San Francisco shall be divided equally between the two companies—fifty (50) per cent. going to each.

ARTICLE V.

All freight rates on the West-bound through traffic of the "Panama Route," i. e., traffic from New York to San Francisco, shall be made by the Railroad Company; and all freight rates on the East-bound through traffic of said "Panama Route," i. e., traffic from San Francisco to New York—shall be made by the Steamship Company.

Changes in the passenger rates at present in force on this route are to be made only by mutual consent.

This article and the preceding article cover business and traffic between San Francisco and New York by the Panama Route, whether originating at or destined to San Francisco or New York or other points whatsoever.

5458 ARTICLE VI.

The intention and purpose of this agreement being to obtain for the said "Panama Route" all the freight business that can be secured at reasonable and remunerative rates and with a view of carrying out this purpose, it is agreed that either party to this agreement shall, at the request of the other party thereto, publish and make operative such through rates between New York and San Francisco as will compete with those made operative by the competing transcontinental railroad lines; a failure to comply with such request promptly, and *at most* within twenty days from the date of its receipt, shall constitute a violation of this contract, and subject the offending party to the provisions of Article XX, treating of liability for damages incurred by such action.

The Railroad Company, however, hereby agrees that whenever, under this provision, it puts in operation on west-bound traffic or calls upon the Steamship Company to put into operation on east-bound traffic between San Francisco and New York a through rate of $8 or less per ton, then the Steamship Company is to be allowed $3.60 per ton out of said rate—in lieu of the 45 per cent. as stipulated by Article IV—upon all merchandise thus carried at less than $8 per ton; but the Steamship Company is to be subject in respect thereto to the lighterage charge of one dollar per ton, in Subdivision X. hereof referred to.

ARTICLE VII.

If, during the pendency of this contract, occasion arises for
5459 the Railroad Company to enter into negotiations with the transcontinental lines, or any of them, for the making of a rental agreement, or of any other similar agreement relating to the freight traffic between the United States ports on the Atlantic and the United States ports on the Pacific, or for joining any association of the so-called transcontinental lines, it is hereby agreed that a delegate designated by the Railroad Company is to represent the "Panama Route" in all such negotiations, or any such association.

The revenue derived from any such agreement or contract with the transcontinental lines as is here contemplated, to be apportioned as follows, to wit:

To the Railroad Company, fifty-five (55) per cent. of the total revenue, and

To the Steamship Company, forty-five (45) per cent. of such revenue.

The outlays incurred in the establishment and completion of such Agreement,—which the Railroad Company is hereby empowered to incur subject to due accounting,—are to be apportioned between and borne by the Railroad Company and the Steamship Company in the like proportions, viz., the Railroad Company 55 per cent. thereof, and the Steamship Company 45 per cent thereof.

ARTICLE VIII.

The receipts of the joint traffic of the parties hereto between New York and the Pacific ports of Central America and Mexico, and *vice versa*, shall be divided thus:

5460 The Steamship Company to receive for its share of the service on the Pacific Coast forty (40) per cent. of the through rates on freight, and (50) per cent. of the passenger fares.

The Railroad Company to receive for its share of the service between Panama and New York sixty (60) per cent of the through rates on freight, and fifty (50) per cent. of the passenger fares.

On this route, viz., between New York and Central American and Mexican ports, and *vice versa*, changes in the rates now in force, both for passengers and freight, shall be made only by mutual consent of the parties hereto.

ARTICLE IX.

During the term of this contract the Railroad Company shall not, directly or indirectly, run any steamers on the Pacific north of Panama, and shall, in so far as its charter and its contract with the Columbian Government may permit, and so far as it can consistently with its own safety and protection under existing treaty stipulations, in every manner lawfully and reasonably within its power, promote and protect the interests of the Steamship Company and the lines of steamships run by it north of Panama in connection with said railroad, and especially against all forms of competition whatsoever, and will, so far as it is practicable, give, turn over to and direct to the steam lines of the Steamship Company, to the extent that it can lawfully control or influence the same, all business destined to Pacific points north of Panama originating on the Isthmus of

5461 Panama and carried upon its railroad, or which may be brought to said Isthmus by other ships or lines, and especially will not, so long as the Steamship Company faithfully performs the stipulations of this Agreement, become interested in, or divide with, any other person or corporation, the gross earnings of a through line or

of any through business between New York and San Francisco, and upon all such through business the full local tariff rates for the time being in force for transportation across the Isthmus of Panama shall be charged to all competing lines engaged in business between New York and San Francisco.

The Railroad Company is to have the right to appoint and maintain at is own expense agents at Panama and San Francisco.

Further, the parties hereto, each for itself, agree that all freight, passengers, baggage, specie and mail matter confided to either for transportation or in any manner brought by the one party to the other for the purpose of being conveyed over and upon the whole or any part of said lines, shall be transported and carried promptly and without undue delay.

During the pendency of this present contract the Steamship Company binds itself not to compete directly or indirectly with the Railroad Company's Columbian line in Atlantic waters, and especially not to run vessels directly or indirectly from the United States ports on the Eastern shore of the continent to Colon, or to the eastern terminal of any of the transcontinental routes.

5462 The Steamship Company agrees during the pendency of this contract in every manner lawfully and reasonably within its power to promote and protect the interests of the Railroad Company, and especially against all forms of competition whatsoever; the Steamship Company further agrees during the pendency of this contract not to divert the traffic to and from any of the Pacific ports North of Panama from the Isthmus route. And for such business the Steamship Company shall not enter into contracts of any kind involving through billing with any person, party or corporation other than the Panama Railroad Company, nor shall the Steamship Company compete, directly or indirectly (by reduced rates or otherwise) with the "Panama Route" on said business.

During the pendency of this contract, the Steamship Company when taking merchandise on its vessels for shipment at any Pacific Coast port situated between San Francisco and Panama (and whether such merchandise be destined to Atlantic or Gulf ports of the United States, or to European points), shall issue its through bills on such merchandise only via the Isthmus of Panama, and it shall not issue such through bills at any of those Pacific ports for any of the above described destinations via San Francisco, or via any other terminal of a transcontinental route.

ARTICLE X.

5463 The Railroad Company shall, during the pendency of this Agreement and until the extension of the road to deep water, continue to employ its lighters to connect with the Steamship Company's vessels and the shore at Panama. The Railroad Company shall furnish lighters in sufficient numbers to load and unload the ships with dispatch; it being the intent and agreement of the

parties hereto that all the lighterage of the Steamship Company at Panama shall be done by the Railroad Company. And for such lighterage, the Steamship Company shall pay to the Railroad Company as follows:

$1 in United States currency for each ton of freight or mail matter coming from New York and going to San Francisco, or *vice versa*, by the Panama Route, whether originating at or destined to New York or San Francisco or other points.

$1.25 per ton in United States currency for all other freight or mail matter.

1/40 of one per cent. for all specie or treasure.

$1 in United States currency for each passenger.

It is further agreed that should, during the pendency of this contract, the railroad at Panama be so extended or located as to reach deep water or the Islands in the Bay, thereby rendering lighterage no longer necessary, the Steamship Company will pay to the Railroad Company, in lieu of lighterage charges as provided above, such wharfage dues as the Railroad Company may fix; but such dues shall not exceed $1 United States currency per ton for freight or mail matter, 1/40 of one per cent. for all specie or treasure, and $1 in United States currency for each passenger; nor shall such wharfage dues exceed those paid for the time being by any other steamship lines for similar service, nor shall any other steamship lines using such
5464 increased facilities at Panama be in anywise favored over or in preference to said Steamship Company.

ARTICLE XI.

During the continuance of the present Agreement the Railroad Company shall have, free of cost, the use of the Steamship Company's wharf at Colon and of any and all of its appurtenances and dependencies for receiving and discharging cargo. The Railroad Company until the expiration of the present Agreement agrees to keep this wharf and all its appurtenances and dependencies at Colon in as good condition as when turned over to said Railroad Company under this stipulation.

It is agreed further, that the above wharf at Colon is to be turned over to the Railroad Company in proper and efficient condition satisfactory to both parties concerned herein, and is thereafter to be maintained in the condition as agreed above by the Railroad Company.

ARTICLE XII.

The Railroad Company agrees to transport coal and other supplies exclusively for the use of the Steamship Company's steamers on the Pacific, from Colon to Panama, at $3 per ton, and to lighter same at Panama at $1 per ton additional.

It is agreed that the above rates shall apply only to a quantity of coal and supplies not exceeding 25,000 tons during one year, from the

16th of December of one year to the 16th of December of the year following, and that on any excess over said quantity of 25,000 tons, the regular tariff rates may be demanded by the Railroad Company.

5465 Unless the Railroad Company's consent in writing be previously obtained, no larger quantity than 4,000 tons of coal is to be transported in any one calendar month, and the Steamship Company agrees not to store along the tracks of the railroad at Panama at any one time a quantity of coal greater than 15,000 tons.

The Railroad Company agrees to transport by each steamer from New York to Colon supplies exclusively for the use of the Steamship Company, at the rate of $5 per ton.

ARTICLE XIII.

The Railroad Company will do at its shops in Panama and Colon such work and repairs for the Steamship Company as the Steamship Company from time to time may request, and as the Railroad Company can perform, without interference with its own business,—charging therefor the cost of labor and material on the Isthmus, with ten per cent. added thereto.

ARTICLE XIV.

The Railroad Company will furnish to the Steamship Company, in connection with its business, free of all charge, the use of all telegraphic facilities owned or to be owned or controlled by the Railroad Company on the Isthmus, it being agreed that its own use of such telegraph shall, for the management of its road, take precedence of all other business.

ARTICLE XV.

The officers and employees of the Steamship Company shall be carried between Panama and Colon free, and between New York and Panama or Colon at the rate of ten dollars for each passenger.

5466 The officers and employees of the Railroad Company shall be carried between Panama and San Francisco at the rate of twenty dollars for each passenger.

ARTICLE XVI.

All damages caused by loss of goods or injury thereto or delay in their transportation, or loss of or injuries or delay to passengers, shall be paid by the party on whose lines the loss or damage or delay occurred when the same can be located. If the same cannot be located, the Railroad Company and the Steamship Company shall contribute thereto in proportion to the distribution herein established between the Railroad Company and the Steamship Company of the freight on the property or passage money of the passenger concerned.

ARTICLE XVII.

The carriage or transportation of salt, coal and grain (except barley in bags between United States points) is hereby exempted from the operation of this contract, and each of the contracting parties reserves its full liberty as to the carriage or transportation of these articles.

ARTICLE XVIII.

If during the pendency of this contract the Panama Railroad Company shall determine to provide elevators and other plant necessary for the handling and transportation of grain across the Isthmus in bulk, the Steamship Company is to be invited to join in the forming of a transportation route for such grain between San Francisco
5467 and other North Pacific ports and Europe. Should the Steamship Company not avail itself of this offer, and elect not to engage in this business, or in case it is found that the Steamship Company's tonnage is inadequate to meet the necessities of this grain traffic, then the Panama Railroad Company shall be at liberty to contract with any other corporation or parties for the carriage of such grain by steam or sailing vessels from San Diego and other Pacific ports north of said port to Panama.

And the Panama Railroad Company shall be further authorized to deliver to said vessels engaged in this grain trade return cargo at Panama under the following conditions and limitations: Such cargo is to be obtained outside of the United States and is to consist only of coarse and rough goods carried at low through rates in competition with the Cape Horn or Magellan route. The articles contemplated by the present clause are: Cement, brick, tiles and other rough building material, rough castings, tin plate, as well as other articles that may be added after full consultation and with the assent of the Steamship Company, and it is hereby declared the intention of both parties that freight carried under this clause shall be such as could in no case go over the Isthmus route at remunerative rates through the regular channels. And that under this clause there shall not be lodged or exercised any power to compete with or to diminish the regular traffic of the Isthmus route in any way whatever, but that its full scope shall be solely to divert heavy and coarse goods such as are usually carried at low freight rates by sailing vessels around Cape Horn.

5468 And it is hereby expressly provided and agreed that the steamers engaged in this grain trade in connection with the Panama Railroad are not to call or trade at any of the intermediate ports between Panama and San Diego, and the Panama Railroad binds itself to insert a provision to that effect in any charters or contracts that it may make with owners of vessels or with other parties for the carrying on of such grain trade.

Article XIX.

It is mutually agreed that the term "ton," as used in this agreement, shall mean two thousand two hundred and forty (2,240) pounds avdp., or forty (40) cubic feet measurement when so taken by the ships, unless otherwise expressly provided herein.

Article XX.

Any and all questions that shall or may arise touching this Agreement or the construction thereof, or as to any other matters and things to be done or performed by either of the parties hereto, as to which the parties hereto cannot agree, shall be submitted to the decision and award of three arbitrators, who shall be disinterested persons, having experience in railway and steamship management, and who shall be chosen, one by each of the parties hereto, and the third by the two so chosen. At any time after the giving of notice of violation, as herein prescribed, either party may name an arbitrator
5469 and give written notice thereof to the other party; and if either party shall fail or omit to name an arbitrator within fifteen days after written notice of the selection of an arbitrator by the other (which arbitrator, however, shall not be selected until after the expiration of thirty days' notice next herein referred to), the arbitrator named by the party giving such notice shall name an arbitrator for and on behalf of the party so failing or omitting, who shall have the same power and authority as though he had been chosen and named by such party, and the decision and award of any two of such arbitrators in respect of the matters so submitted to them shall be binding and conclusive upon the parties; and each of the parties hereto does bind itself and its successors faithfully to abide by and carry out any award so made by any two of the arbitrators appointed as above.

The Railroad Company, if it shall consider that any of the above clauses have been, as to the spirit or letter, violated by the Steamship Company, or the Steamship Company, if it shall consider that any of the above clauses have been, as to the spirit or letter, violated by the Railroad Company, may notify the other party to this agreement that it charges such other party with a violation thereof, specifying the particular charge or charges of violation thereof so made. The Company charged with said violation, in case within thirty days after its receipt of such notice it denies such alleged violation thereof, hereby agrees to have the question thus raised decided by the arbitrators as herein provided. These arbitrators shall determine,
5470 first, as to the actual fact of the alleged violation, and secondly, upon the actual amount of money damages to be paid by the party found guilty of said violation to the party making the charge, or the particular thing to be done or to be refrained from being done by such guilty party; and such amount shall be paid or

such award shall be complied with within ten days of the rendering of such award. The two parties both agree to furnish to the arbitrators any paper, instrument or book in their possession which said arbitrators may request them to produce. Should any arbitration fail for any cause, then such proceedings as above prescribed may be taken *de novo* by either party to this agreement.

ARTICLE XXI.

The Steamship Company shall make over and deliver to the Railroad Company, charter-parties of even date with the present instrument, at the nominal rate of one dollar per month, and unconditional in terms of the following steamers belonging to said Company, and now running or to be run betwen Panama and San Francisco under this contract, to wit, the *Acapulco*, the *San Jose*, the *City of Sydney*, the *Colon*, the *San Blas* and the *San Juan*, and agrees to likewise make over and deliver to the Railroad Company like charters of any other steamers placed upon said service under the provisions of Section "A" of Article III of this contract, simultaneously with the placing of the same upon said service.

It is hereby further agreed that as long as the Steamship Company performs punctually and regularly three trips per month in
5471 each direction under and according to the provisions of Section "A," Article III, of this contract, then these charters are to remain unenforceable.

But if the Steamship Company, from any cause except the act of God, or the public enemy, or arising from the perils of the sea, omits two sailings in any one calendar month during the continuance of this contract, then the above charters are, as to all or any one or more of said steamers, at the Railroad Company's option, to become enforceable, and the Railroad Company shall have, and is hereby given the absolute right and power to run said vessels, or any of them, on the aforesaid described route and service, calling at all ports between Panama and San Francisco, and *vice versa*, for the account and risk of, and at the expense of said Steamship Company, during the unexpired portion of this contract: it being the express intent and agreement of the parties hereto that the covenants of this article shall be specifically enforceable, and that breach thereof cannot be adequately compensated in damages.

The Steamship Company agrees, in the contingency aforesaid, peacefully to surrender to the Railroad Company, upon its demand in writing, the said steamers, or any of them, without the intervention of any Court or legal proceedings of any kind whatsoever; the Steamship Company hereby irrevocably giving the Railroad Company all the power and authority needful in the premises, in order that the Railroad Company may take possession of said steamers, or of any one or more of them, and operate them, or any one or more of them, under the provisions and terms of the charter-parties

5472 hereto annexed; and it is expressly agreed that in case of any conflict of opinion or doubt as to the respective rights of the parties hereto under this clause, until such rights are finally established by the judgment and decree of a competent court, or by arbitration in the manner hereinbefore provided, the Steamship Company or its successors will not, in the contingency herein contemplated, hold said ships as against any demand of said Railroad Company, and will not prevent or hinder the use of the same by the Railroad Company in the manner or in the business contemplated by this Agreement.

Article XXII.

The Railroad Company shall make over and deliver to the Steamship Company, charter-parties of even date with the present instrument, at the nominal rate of one dollar per month and unconditional in terms, of the following steamers belonging to said Railroad Company and now running or to be run between New York and Colon under this contract, to wit, the *Alliance*, the *Advance* and the *Finance*, and agrees to likewise make over and deliver to the Steamship Company like charters of any other steamers placed upon said service under the provisions of Section "B" of Article III. of this contract, simultaneously with the placing of the same upon said service.

It is hereby further agreed that as long as the Railroad Company's Columbian line performs punctually and regularly at least three trips per month in each direction, under and according to the provisions of Section "B" of Article III. of this contract, then these charters are to remain unenforceable.

But if the Railroad Company from any cause except the act
5473 of God, or the public enemy, or arising from the perils of the sea, omits two sailings in any one calendar month during the continuance of this contract, then the above charters are, as to all or any one or more of said steamers, at the Steamship Company's option to become enforceable, and the Steamship Company shall have and is hereby given the absolute right and power to run said vessels, or any of them, on the aforesaid described route and service, between New York and Colon, and *vice versa*, for the account and risk of, and at the expense of said Railroad Company, during the unexpired portion of this contract, it being the express intent and agreement of the parties hereto that the covenants of this article shall be specifically enforceable and that breach thereof cannot be adequately compensated in damages.

The Railroad Company agrees in the contingency aforesaid, peacefully to surrender to the Steamship Company, upon its demand in writing, the said steamers, or any of them, without the intervention of any court or legal proceedings of any kind whatsoever; the Railroad Company hereby irrevocably giving the Steamship Company all the power and authority needful in the premises, in order that

the Steamship Company may take possession of said steamers, or of any one or more of them, and operate them, or any one or more of them, under the provisions and terms of the charter-parties hereto annexed; and it is expressly agreed that in case of any conflict of opinion or doubt as to the respective rights of the parties hereto under this clause, until such rights are finally established by the judgment and decree of a competent court, or by arbitration
5474 in the manner hereinbefore provided, the Railroad Company, or its successors will not, in the contingency herein contemplated, hold said ships as against any demand of said Steamship Company, and will not prevent or hinder the use of the same by the Steamship Company in the manner or in the business contemplated by this Agreement.

ARTICLE XXIII.

For all joint business transacted under this contract or for all services or material furnished by the parties thereto to each other, there shall, except as herein otherwise expressly provided for, be rendered at New York a monthly account on the 25th day of each month for the business of the preceding month, such statement to cover all business of the preceding month, cleared during said month, and the sums due shall be paid on that date to the creditor company.

ARTICLE XXIV.

It is understood that the Steamship Company, notwitnstanding anything in this Agreement contained, is to be at liberty to run and load the steamships *City of Para* and *Colombia* for their return voyages to New York from Colon on the round voyages now pending.

It is understood and agreed that the Railroad Company, anything herein contained to the contrary notwithstanding, is to be at liberty to load and run steamers as follows:

Allianca to sail from New York on December 20th; *Advance* to sail from New York December 30th; these ships to take cargo for
5475 San Francisco, to be delivered to the Railroad Company's steamer *Washtenaw*, sailing from Panama on or about January 12th, 1896. The *Finance* to complete her round voyage now pending.

The Railroad Company's steamer *City of Everett*, now at sea, to arrive at Panama on or about December 16th, to load and return to San Francisco with the San Francisco cargoes out from New York, brought to the Isthmus by Columbian Line steamers of November 30th and December 10th, 1895, the New York cargo brought by said steamer *City of Everett* to be delivered at Colon to the Columbian Line ships to be taken by them to New York.

The Railroad Company's steamer *Washtenaw* to sail from San Francisco for Panama on or about December 17th, taking San Francisco cargo for New York, to be delivered at Colon to the Columbian

Line ships, to be taken by them to New York; said steamer *Washtenaw* to sail on her return voyage to San Francisco on or about January 12th, 1896, taking New York cargo bound for San Francisco, brought to Colon by the Columbian Line steamers *Allianca*, from New York December 20th, and *Advance*, from New York, December 30th, 1895.

ARTICLE XXV.

This contract, except as herein otherwise expressly prescribed, shall remain in force for three years from the 16th day of December, 1895, and for the further period of two years after the expiration of such period of three years if the Steamship Company should so elect, and if it shall have given written notice of such election to the Railroad Company at least ninety days before the expiration of the first three years' term.

5476 In witness whereof, the said parties hereto have caused this instrument to be signed in their corporate names by their respective Presidents, and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries, all thereunto duly authorized by resolutions of their respective Boards of Directors, the day and year first hereinabove written.

PANAMA RAILROAD COMPANY,
By J. EDWARD SIMMONS, *President.*

Witness as to the Panama Railroad Company.

WM. NELSON CROMWELL,
By E. A. DRAKE, *Secretary.*

(Corporate Seal.)

THE PACIFIC MAIL STEAMSHIP COMPANY,
By C. P. HUNTINGTON, *President.*

Witness as to the Pacific Mail Steamship Company.

WM. NELSON CROMWELL,
By E. A. DRAKE, *Secretary.*

(Corporate Seal.)

STATE OF NEW YORK,
County of New York, } ss:

On this 16th day of December, 1895, before me personally appeared J. Edward Simmons, personally known to me to be the indi-
5477 vidual who subscribed the within instrument for and in behalf of The Panama Railroad Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the President of the said Corporation; that he knew the corporate seal of the said Corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said Corporation by authority of its Board of Directors; and the said J. Edward Simmons acknowledged the said instrument to be the act and deed of the said

Corporation, and that the same was executed by said Corporation freely and voluntarily for the purposes therein mentioned.

EDWARD T. McLAUGHLIN, Jr.,
(Notarial Seal.) *Notary Public, New York County.*

STATE OF NEW YORK, }
County of New York, } ss:

On this 16th day of December, 1895, before me personally appeared E. A. Drake, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Panama Railroad Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the Secretary of the said Corporation; that he knew the corporate seal of the said Corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said Corporation by authority of its Board of Directors; and the said E. A. Drake acknowledged the said instru-
5478 ment to be the act and deed of the said Corporation, and that the same was executed by said Corporation freely and voluntarily for the purposes therein mentioned.

EDWARD T. McLAUGHLIN, Jr.,
(Notarial Seal.) *Notary Public, New York County.*

STATE OF NEW YORK, }
County of New York, } ss:

On this 16th day of December, 1895, before me personally appeared C. P. Huntington, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the President of the said Corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said Corporation by authority of its Board of Directors; and the said C. P. Huntington acknowledged the said instrument to be the act and deed of the said Corporation, and that the same was executed by said Corporation freely and voluntarily for the purposes therein mentioned.

EDWARD T. McLAUGHLIN, Jr.,
(Notarial Seal.) *Notary Public, New York County.*

5479 STATE OF NEW YORK, }
County of New York, } ss:

On this 16th day of December, 1895, before me personally appeared W. H. Lane, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the Secretary of the said Corporation; that he knew the corporate seal of the said

Corporation: that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said Corporation by authority of its Board of Directors; and the said W. H. Lane acknowledged the said instrument to be the act and deed of the said Corporation, and that the same was executed by said Corporation freely and voluntarily for the purposes therein mentioned.

(Notarial Seal.) EDWARD T. McLAUGHLIN, Jr.,
Notary Public, New York County.

5480 EXTRACT FROM MINUTES OF REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE PANAMA RAILROAD COMPAY, HELD IN THE CITY OF NEW YORK, DECEMBER 12TH, 1895.

Resolved, That the proposed Agreement between the Panama Railroad Company and the Panama Mail Steamship Company, as initialed and approved by the respective Counsel of the Companies, Messrs. Cromwell and Tweed, is hereby ratified, approved and adopted, said agreement being as follows:

And the President and Secretary of this Company are hereby fully authorized and empowered to execute, acknowledge and deliver, for and in behalf of this Company, and under its corporate seal, the Agreement aforesaid, together with the several Charter Parties and Stipulations provided by said Agreement to be made and delivered at this time, or any time hereafter, by this Company; such Charter Parties and Stipulations to be in such form and terms as to the Executive Committee may seem proper, in order to carry out said Agreement; and said Officers are also fully authorized and empowered to do all acts and things which they may deem necessary or proper to effectuate the completion of said Agreement and the full establishment of the same.

I hereby certify the foregoing to be a true and correct copy of the Resolution adopted by the Board of Directors of the Panama Railroad Company at a meeting thereof held on December 12, 1895, duly called and held, and that the Agreement therein referred to is as hereto annexed.

Witness my hand and official seal this 16th day of December, 1895.

[CORPORATE SEAL.] E. A. DRAKE, *Secretary.*

5481 EXTRACT FROM THE MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE PACIFIC MAIL STEAMSHIP COMPANY, HELD AT NO. 35 WALL STREET, IN THE CITY OF NEW YORK, SATURDAY, DECEMBER 14TH, 1895, AT 12 O'CLOCK NOON—A QUORUM BEING PRESENT AND ASSENTING:

Resolved, That the Agreement between the Panama Railroad Company and this Company, which has been prepared by Counsel and is now submitted to this Board, be and the same is hereby approved, and that the President and Secretary of this Company be, and they

are hereby authorized to execute said Agreement under the corporate seal of this Company, and to acknowledge and deliver the same, and to execute, acknowledge and deliver charter parties as prescribed in said Agreement, and to do such other acts and things as they may deem necessary or proper to carry out said Agreement.

Attest:

A true copy. W. H. LANE, *Secretary.*

[SEAL OF PACIFIC MAIL STEAMSHIP COMPANY.]

5482 Q. Now, without going into them in detail, the Panama Railroad Company had made contracts at different times previous to that, hadn't they?

A. They had.

Q. I mean with the Pacific Mail Steamship Company?

A. Yes.

Q. How far back did this route between New York and San Francisco go into operation?

A. It was the first transcontinental route. It was opened in 1850.

Q. In connection then with the Pacific Mail?

A. No; the Pacific Mail was not then in operation.

Q. When did the Pacific Mail become a part of the route?

A. I couldn't tell positively without looking back on the records.

Mr. LOVETT. What was that?

Mr. SEVERANCE. I asked him how long ago the Pacific Mail became a part of the Panama route. He said the Panama route was opened in 1850 to the Pacific coast, to San Francisco, but the Pacific Mail was not then in operation; and I asked him what time the Pacific Mail became a part of it, and he said he was unable to tell.

Q. I will ask you whether it is as far back as 1870.

A. We have a contract with them dated 1872, of which I have the original here, so that I know our relations existed at that time.

Q. That is far enough back. And various contracts were made, beginning in 1872, of which you had knowledge?

A. Yes.

Q. And of which you have the originals in your possession?

A. The originals are in my possession now.

[Pamphlet marked Complainant's Exhibit 180 (Rossbottom).]

Q. I show you Complainant's Exhibit 180. Is this a copy

5483 of the supplemental contract with the Panama Railroad Company?

A. It is.

Q. With the Pacific Mail Steamship Company, dated June 11, 1902?

A. It is.

Q. You have the original here in Court?

A. I have.

Mr. SEVERANCE. By consent this copy is offered in lieu of the original, with the same force and effect.

Mr. LOVETT. Yes.

Complainant's Exhibit 180 (Rossbottom) is as follows:

COMPLAINANT'S EXHIBIT 180. (Rossbottom.)

"The Panama Route."

SUPPLEMENTAL CONTRACT BETWEEN THE PANAMA RAILROAD COMPANY
and
THE PACIFIC MAIL STEAMSHIP COMPANY.

Dated June 11, 1902.

This memorandum of an agreement, made and entered into this eleventh day of June, 1902, by and between the Panama Railroad Company, a corporation duly chartered by and organized under the laws of the State of New York, and hereinafter called the Railroad Company, party of the first part, and the Pacific Mail Steamship Company, also a corporation duly chartered by and organized under the laws of said State, and hereinafter called the Steamship Company, party of the second part, witnesseth, that

5484 Whereas, the parties hereto have entered into another Agreement, bearing even date herewith, for the purpose of regulating the traffic arrangements between them, and hereinafter called the Traffic Agreement; and

Whereas, a suit is now pending before the Supreme Court of the Republic of Colombia, brought by the Attorney-General of said Republic against the Railroad Company, to compel the Railroad Company to grant to all carriers the privilege of issuing through bills of lading over its line of railroad, and to forbid it to give to any carrier special privileges or advantages in respect of transportation of goods over said railroad; and

Whereas, carriers of goods and passengers from Panama to points upon the Pacific, north of said City, may enter into competition with the Panama Route, and may embarrass the operations of said route, and it may be necessary for the proper conduct of the business that other independent means of transportation from Panama to points on the Pacific, south of said City, should be provided.

Now, therefore, in consideration of the premises, and of the sum of One Dollar by each of the parties hereto to the other in hand paid, and of other good and valuable considerations, the receipt whereof is hereby acknowledged, and of the making of said Traffic Agreement, and of the various covenants of the respective parties hereinafter contained, the parties aforesaid have covenanted and agreed, and do hereby covenant and agree to and with each others as follows:

5485 First. The Railroad Company and the Steamship Company will co-operate in defending, or procuring the dismissal of, the said suit now pending before the Supreme Court of the Republic of Colombia, and will contribute in the proportion of 55 per cent by the Railroad Company and 45 per cent of the Steamship Company to

the expenses hereafter and during the operation of said Traffic Agreement incurred for counsel in connection with the defense of said suit or with such efforts to procure the dismissal thereof.

Second. If the Railroad Company should not, on account of its inability to do so, or for any other reason, give to the Steamship Company the exclusive privilege of issuing through bills of lading over its line of railroad, to and from the ports referred to in the first paragraph of Art. 1 of said Traffic Agreement, in connection with the Railroad Company and each and every one of its Atlantic connecting lines, then the Steamship Company shall be entitled, at its option, to terminate said Traffic Agreement upon giving written notice to the Railroad Company of its election so to terminate the same.

Third. Upon the execution of the said Traffic Agreement by the parties hereto the Railroad Company is to forthwith give notice to all steamship lines running steamers between Panama and ports on the Pacific Coast north thereof other than the Pacific Mail Steamship Company, that upon the expiration of ninety days from the giving of such notice the Railroad Company will cease to through bill with the steamship lines so notified, or either or any of them, in respect of the transportation of merchandise on the Pacific Coast north
5486 of Panama, and the parties hereto shall endeavor to procure arrangements between such other steamship lines so notified and the parties hereto for a division of territory under which the transportation of merchandise on the Pacific Coast north of Panama shall be conducted by the Pacific Mail Steamship Company only, and the transportation of merchandise on the Pacific Coast south of Panama shall be conducted by such other lines and for a mutual interchange of business at Panama between said Pacific Mail Steamship Company and such other steamship lines.

If on or before the expiration of ninety days from the giving of such notice such other steamship lines shall not have agreed to such division of territory and to such mutual interchange of business at Panama as above prescribed, but shall conduct the transportation of merchandise north of Panama, the Pacific Mail Steamship Company may, at its own expense, but otherwise in co-operation with the Panama Railroad Company inaugurate a steamship line extending as far south as Valparaiso, and the Panama Railroad Company will extend to the Pacific Mail Steamship Company in respect of such line facilities in all respects equal to those which the Railroad Company may accord to any other line operating steamers south of Panama.

If, in consequence of the notification to be given as above prescribed from the Railroad Company to the other steamship lines, or such efforts to secure a division of territory as above provided, such other steamship lines shall withdraw their existing lines connecting Panama with points on the Pacific Coast south thereof, then
5487 the Pacific Mail Steamship Company will, if the Railroad Company shall so request, forthwith make arrangements for providing for a line of steamers running south from Panama as far as Valparaiso, and shall within at most 120 days after the making of such request establish and begin the actual operation of such line;

and in that event the Railroad Company will thereafter and so long as such line shall be maintained and operated in a regular and efficient manner so as to accommodate properly the traffic between said points and Panama in connection with the railroad refuse and continue to refuse to through-bill with other steamship lines in respect of business south of Panama, and will through bill exclusively with the Pacific Mail Steamship Company for such business, and will extend to the Pacific Mail Steamship Company facilities for such business in all respects equal to those which by the said Traffic Agreement are extended to the business conducted by the Pacific Mail Steamship Company north of Panama: *Provided, however*, That the running of such line of steamers south from Panama by the Pacific Mail Steamship Company and such exclusive through-billing privilege may be terminated upon one year's notice from the Pacific Mail Steamship Company to the Panama Railroad Company of its election to terminate the running of such line, or upon one year's notice from the Panama Railroad Company to the Pacific Mail Steamship Company of its election to terminate such exclusive through-billing privileges.

Fourth. It is mutually and expressly understood and agreed that if at any time during the continuance of said traffic agreement
5488 a majority of the shares of the Railroad Company or its railroad property shall be purchased or acquired by the United States of America, or by any person or persons representing it, or acting in its behalf, then either party hereto may give notice in writing to the other of its intention to terminate said Traffic Agreement, and at the expiration of six months from the giving of such notice the said Traffic Agreement and the previous articles of this agreement shall terminate, come to an end, and be utterly null and void thenceforth, anything in said Traffic Agreement or herein contained to the contrary notwithstanding.

In witness whereof, each of the parties hereto has caused these presents to be signed by its President, attested by its Secretary, and sealed with its corporate seal, the day and year first hereinabove written.

PANAMA RAIL ROAD COMPANY,
By J. EDWARD SIMMONS, *President.*

Attest:
E. A. DRAKE,
Secretary.

PACIFIC MAIL STEAMSHIP COMPANY,
By CHARLES H. TWEED, *President.*

Attest:
JOS. HELLEN,
Secretary.

5489 STATE OF NEW YORK,
County of New York, } *ss:*

On this 11th day of June, 1902, before me personally appeared J. Edward Simmons, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Panama

Rail Road Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the President of the said Corporation; that he knew the corporate seal of the said Corporation; that the seal affixed to the said instrument was such corporate seal; and that the said instrument was signed by him and sealed in behalf of the said Corporation by authority of its Board of Directors; and the said J. Edward Simmons acknowledged the said instrument to be the act and deed of the said Corporation, and that the same was executed by said Corporation freely and voluntarily for the purposes therein mentioned.

[NOTARIAL SEAL.]

JOHN J. TIERNEY,
Notary Public, Kings Co.

Certificate filed in New York County, N. Y.

STATE OF NEW YORK,
County of New York, } ss:

On this 11th day of June, 1902, before me personally appeared E. A. Drake, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Panama Rail Road Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the Secre-
5490 tary of the said Corporation; that he knew the corporate seal of the said Corporation; that the seal affixed to the said instrument was such corporate seal; and that the said instrument was signed and sealed by him in behalf of the said Corporation by authority of its Board of Directors; and the said E. A. Drake acknowledged the said instrument to be the act and deed of the said Corporation, and that the same was executed by said Corporation freely and voluntarily for the purposes therein mentioned.

[NOTARIAL SEAL.]

JOHN J. TIERNEY,
Notary Public, Kings Co.

Certificate filed in New York County, N. Y.

STATE OF NEW YORK,
County of New York, } ss:

On this 11th day of June, 1902, before me personally appeared C. H. Tweed, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the President of the said Corporation; that he knew the corporate seal of the said Corporation; that the seal affixed to the said instrument was such corporate seal; and that the said instrument was signed by him and sealed in behalf of the said Corporation by authority of its Board of Directors; and the said C. H. Tweed acknowledged the said instrument to be the act and deed of the said Corporation, and that

the same was executed by said Corporation freely and volun-
5491 tarily for the purposes therein mentioned.

[NOTARIAL SEAL.] JOHN J. TIERNEY,
Notary Public, Kings Co.

Certificate filed in New York County, N. Y.

STATE OF NEW YORK,
County of New York, } ss.:

On this 11th day of June, 1902, before me personally appeared Joseph Hellen, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the Secretary of the said Corporation; that he knew the corporate seal of the said Corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said Corporation by authority of its Board of Directors; and the said Joseph Hellen acknowledged the said instrument to be the act and deed of the said Corporation, and that the same was executed by said Corporation freely and voluntarily for the purposes therein mentioned.

[NOTARIAL SEAL] JOHN J. TIERNEY,
Notary Public, Kings Co.

Certificate filed in New York County, N. Y.

5492 EXTRACT FROM MINUTES OF REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE PANAMA RAIL ROAD CO., HELD AT THE OFFICE OF THE COMPANY, NO. 24 STATE STREET, NEW YORK, ON THURSDAY, JUNE 12TH, 1902.

Resolved, That the contract and supplemental agreement between the Pacific Mail S. S. Co. and this Company, which have been approved by Counsel and now submitted to this Board, be, and the same are, hereby ratified, approved and adopted, said agreements being as follows:

* * * * * * *

And the President and Secretary of this Company are hereby fully authorized and empowered to execute, acknowledge and deliver, for and in behalf of this Company, and under its corporate seal, the agreements aforesaid, together with the several charter parties and stipulations provided by said agreements to be made and delivered at this time or any time hereafter by this Company; said charter parties and stipulations to be in such form and terms as to the Executive Committee may seem proper, in order to carry out said agreements; and said officers are also fully authorized and empowered to do all acts and things which they may deem necessary or proper to effectuate the completion of said agreements and the full establishment of the same.

3315

I hereby certify the foregoing to be a true and correct copy of the Resolution adopted by the Board of Directors at its
5493 Meeting held on June 12th, 1902, duly called and held.

Witness my hand and official seal this 12th day of June, 1902.

[SEAL OF PANAMA RAILROAD CO.] E. A. DRAKE, *Secretary*,

EXTRACT FROM THE MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE PACIFIC MAIL STEAMSHIP CO., HELD AT NO. 120 BROADWAY, IN THE CITY OF NEW YORK, ON WEDNESDAY, JUNE 11TH, 1902, AT 3 O'CLOCK P. M. A QUORUM BEING PRESENT AND ASSENTING.

Resolved, That the agreement and the supplemental agreement between the Panama Rail Road Company and this Company, which are now submitted to the Board, be and the same are hereby approved, and that the President and Secretary of this Company be and they are hereby authorized to execute said agreement and supplemental agreement under the corporate seal of this Company and to acknowledge and deliver the same, and to execute, acknowledge and deliver charter parties as prescribed in said agreement, and to do such other acts and things as they may deem necessary and proper to carry out said agreement and supplemental agreement.

Attest:

A true copy.

[SEAL OF PACIFIC MAIL STEAMSHIP CO.] JOS. HELLEN, *Secretary*.

5494 [Paper marked Complainant's Exhibit 181. (Rossbottom.)]

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 181, which, it is stipulated, is the original contract dated the 1st of October, 1872, made between the Pacific Mail Steamship Company and the Union Pacific Railroad Company. It is stipulated that a copy of this exhibit may be substituted for the original, with the same force and effect.

Complainant's Exhibit 181 (Rossbottom) is as follows:

COMPLAINANT'S EXHIBIT 181. (Rossbottom.)

This indenture made and executed this first day of October eighteen hundred and seventy-two by and between the Pacific Mail Steamship Company a corporation duly created under the laws of the State of New York, and owning steamships and conducting transportation between the cities of New York and San Francisco via Panama of the first part and the Union Pacific Rail Road Company a corporation created by the laws of the United States of America also conducting transportation between said cities of New York and San Francisco via connecting roads, and operating a railroad between the city of Omaha, State of Nebraska, and the point of junction with the Central Pacific Railroad of the second part.

5495 Witnesseth that by reason of the natural competition between the parties hereto in relation to the transportation of merchandize and other freight between the two cities of San Francisco and New York, and from other causes the rates at which said business is transacted are liable to uncertainties and fluctuations which tend to impair the usefulness of both said companies to the public and render the obtaining by either of said companies of a reasonable and just compensation therefor doubtful and precarious.

That to avoid for the future such possible or probable results in the transaction of said business the parties have agreed that, during the subsistence of this agreement, their earnings from said traffic shall be in substance apportioned between them in the manner, upon the terms, and on the conditions hereinafter set forth, that is to say:

First. The party of the first part hereby covenants and agrees that it will in each and every month provide three first class steamships to sail in each month from the port of New York for the Isthmus of Panama with connecting steamers on the Pacific Ocean for the port of San Francisco, and that it will provide space and all needful facilities for the transportation of freight therein from said port of New York to said Port of San Francisco under the terms of this Agreement as hereinafter set forth to an amount of fourteen thousand seven hundred (14,700) Tons in all during each and every year not exceeding however Seven hundred (700) Tons in any one Steamer at rates to be fixed by the party of the second part from time to time during the subsistence of this agreement as hereinafter pro-
5496 vided and will receive and transport the same at such rates, in such ships between said ports (and also all such further through freight as it may be able to receive and transport without excluding its local traffic) provided such through freights can be obtained at such rates and not otherwise.

Second. Said party of the first part further covenants and agrees that the party of the second part or its duly authorized officers or agents shall have the exclusive right from time to time to fix the rates on all such through freight of every description carried by the party of the first part from New York to San Francisco during the subsistence of this agreement. Such rates shall not however be fixed beyond the current rates for such freights charged at the same time by the party of the second part, nor in any event beyond one hundred and sixty dollars per ton for "First class," one hundred and forty dollars per ton for "Second class," Ninety dollars per ton for "Third class" ~~and Sixty dollars per ton for "Third class"~~ and sixty dollars per ton for "Fourth Class" and special freights.

Third. The said party of the first part covenants and agrees that it will provide at its wharves in the City of New York proper accommodation for, and will so far as practicable at all times during business hours receive goods offered for such through transportation and that it will keep at its office in the City of New York careful and accurate books of accounts and vouchers showing the details and amounts of such traffic and the earnings thereof which books of account and

vouchers shall be open at all times to the inspection of the
5497 party of the second part and its agents, and said party of the first part shall furnish promptly, as they are made or received copies of all manifests or other documents showing the freight so transported by the party of the first part upon each vessel on each voyage during the period of this agreement and the rates and amounts therof.

Fourth. Said party of the first part covenants and agrees to render to the party of the second part at the expiration of each month from the date of this Indenture a detailed account of all such traffic and of the gross receipts therefrom as nearly as is possible and such gross receipts shall include the amount actually contracted to be paid for through freight shipped without any deduction on account of failure to collect the same or damage to goods commissions or from any other cause whatever.

Fifth. It is further covenanted and agreed between the parties that from the gross receipts as above defined which shall be obtained by the party of the first part during each and every year while this agreement subsists the said party of the first part shall first retain and receive upon Fourteen thousand seven hundred tons as its portion of the proceeds of the common traffic an amount equal to fifty (50) dollars per ton upon Fourteen thousand and seven hundred (14,700) tons transported from said Port of New York to said Port of San Francisco (that is seven hundred and thirty-five thousand dollars ($735,000) and that if at the expiration of any one year said party of the first part shall have failed to have received in gross receipts as aforesaid Seven hundred and thirty-five thousand dollars
5498 ($735,000) upon its transportation of the first fourteen thousand seven hundred (14,700) tons of such through freight (or of any number of tons less than fourteen thousand seven hundred (14,700) should such through freight so transported by it not have amounted to fourteen thousand seven hundred (14,700) tons, then and thereupon the party of the second part will pay to the said party of the first part from its own earnings or if they be insufficient will absolutely pay to the said party of the first part enough to make up that sum, but if the said party of the first part shall during such period have transported such freight to an amount equal to fourteen thousand seven hundred (14,700) tons and shall have received therefor gross receipts as aforesaid exceeding fifty dollars per ton then and thereupon such excess of receipts upon such fourteen thousand seven hundred tons shall be paid to the party of the second part.

Sixth. And it is further covenanted and agreed between the parties that in case the through freight transported by the party of the first part during the subsistence of this agreement shall in any year exceed said amount of fourteen thousand seven hundred tons (the profit and loss on which is to be first adjusted as aforesaid) all the earnings from such excess of fourteen thousand seven hundred tons shall after the deduction and retention of thirty (30) dollars per ton of (by) the party of the first part be equally divided between the parties up to

fifty dollars a ton and beyond that shall go to the said party of the second part. And in the event of the said party of the second part having so fixed the rates for such through freight that thirty
5499 dollars per ton shall not have been earned upon such excess of through freight then the party of the second part shall and will pay to the party of the first part enough to make good to it thirty dollars per ton on the excess of through freight carried beyond said fourteen thousand seven hundred tons.

Seventh. It is further covenanted and agreed between the parties that approximate settlements as nearly complete as may be shall be made monthly within ten days from the rendition of the accounts of said traffic by the party of the first part as hereinbefore provided and all balances due by either party be forthwith by them respectively paid and further that complete settlements shall be made at the end of each year during the existence of this agreement and the balances be promptly paid as aforesaid. In case of the failure of either party to pay within thirty days any balance found due upon adjustment between them of the accounts so rendered (whether the approximate monthly or settling yearly accounts) such failure to pay shall give to the other party the right to terminate this contract at any time upon giving a notice of thirty days in writing of its intention so to do.

Eighth. It is further covenanted and agreed between the parties that in making the yearly adjustments to determine whether the said party of the first part has received said fifty dollars per ton on said fourteen thousand seven hundred tons in any year the average gross receipts per ton on said through traffic of the year shall form the basis of the computation and so in like manner said basis shall be adopted in the adjustment of any excess of gross receipts on said fourteen thousand seven hundred tons beyond said fifty dollars
5500 per ton and also in the adjustment of gross receipts on the traffic which shall exceed fourteen thousand seven hundred tons per annum.

Ninth. It is further covenanted and agreed between the parties that this contract and all the covenants herein contained shall continue to be obligatory upon the parties, respectively, for and during the period of three (3) years from October first, eighteen hundred and seventy-two: *Provided, however*, That either party may terminate the same at any time within the three years by giving ninety (90) days' notice in writing of their wish to so terminate it. And further that if said contract continue unrevoked by either party in manner as aforesaid during the said period of three years then and thereupon the same shall continue in full force for the further period of seven years from the expiration of said term of three years.

Provided, however, That at any time during said further term of seven years either party shall have the right to terminate the same by giving to the other party three months' written notice of its intention to terminate the same.

Tenth. And it is further covenanted and agreed between the parties that in case this contract shall at any time be terminated in conformity to the foregoing provisions so that such termination will take effect at some other period than the expiration of a month or of the year at which accounts of the said traffic are to be made up and adjusted as aforesaid then and thereupon the accounts shall be made up and adjusted and balances paid upon the principles aforesaid upon that portion of the year which shall have elapsed since the period fixed as aforesaid for the next preceding adjustment.

Eleventh. It is further covenanted and agreed between the parties that this contract shall be deemed to apply to all through freight transported by the party of the first part from the Atlantic States to San Francisco.

5501 In witness whereof the party of the first part hath caused its corporate seal to be attached hereto attested by the president and secretary and the party of the second part hath caused its corporate seal to be attached hereto in like manner attested by its president and secretary the day and year first above written.

[SEAL.] Pacific Mail Steamship Co.

Attest:

THEO. T. JOHNSON, *Sec'y.*

PACIFIC MAIL S. S. CO.,
A. B. STOCKWELL, *Pres.*

Sealed and delivered in the presence of
WM. H. BOWERS.

UNION PACIFIC R. R. CO.,
By H. F. CLARK, *Prest.*

Attest:

[SEAL.] Union Pacific Railroad Company. E. H. ROLLINS, *Secretary.*

1862.

On fourth page, 3rd & 4th line, words "and sixty dollars per ton for third class" stricken out before execution.

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered, that on this twenty-third day of October, A. D. 1872, before me, William H. Bowers, a notary public of the State of New York, duly commissioned and sworn, and dwelling in said city and county, personally appeared Theodore T. Johnson, to

5502 me personally known, and known to me to be the secretary of the Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say that he resides in the town of New Rochelle, County of Westchester and State of New York; that he knows the corporate seal of said company; that the seal which is affixed to the foregoing instrument is such corporate seal, and was thereto affixed by authority of the board of directors of the said company, and that A. B. Stockwell is the president of said company, that his name

signed to said instrument as president is in his own proper handwriting, and that the said A. B. Stockwell, as president, and this deponent, as secretary, signed their names to the said instrument by authority of the said board of directors of said company.

In witness whereof, I have hereunto set my hand and affixed my official notarial seal the day and year first above written.

[SEAL.] WILLIAM H. BOWERS,
William H. Bowers, *Notary Public, N. Y. Co.*
Notary Public,
State of New York.

Endorsed on cover:

Box 23. No. 8.
(F–18)

THE PACIFIC MAIL
STEAMSHIP COMPANY
—with—
THE UNION PACIFIC
RAIL ROAD COMPANY.

AGREEMENT.
Dated, Oct. 1, 1872.

5503 Q. A copy of that exhibit 181 was lodged with the Panama Railroad Company, was it not?

A. We have it in our files.

[Paper marked Complainant's Exhibit 182. (Rossbottom).]

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 182, a copy of an agreement between the Transcontinental Association, composed of certain railroads named in it, and the Pacific Mail Steamship Company, dated the 1st day of October, 1889. It is agreed that this copy may be offered in lieu of the original, subject to correction, with the same force and effect as though the original were introduced in evidence.

Complainant's Exhibit 182 (Rossbottom) is as follows:

COMPLAINANT'S EXHIBIT 182 (Rossbottom).

This agreement between the Trans-Continental Association, an Association consisting of the following Railroad Companies, namely:

The Southern Pacific Company;
The Atchison, Topeka & Santa Fe Railroad Company;
The Atlantic & Pacific Railroad Company;
The California Central Railway Company;
The California Southern Railroad Company;
The Burlington & Missouri River Railroad Company;
The Denver & Rio Grande Railway Company;

The Denver & Rio Grande Western Railway Company;
The Northern Pacific Railroad Company;
5504 The Oregon Railway & Navigation Company;
The Missouri Pacific Railway Company;
The Texas & Pacific Railway Company;
The Oregon Short Line Railway Company;
The Union Pacific Railway Company;
The St. Louis & San Francisco Railroad Company;
The Chicago, Kansas & Nebraska Railway;
Denver, Texas & Fort Worth Railroad; and
The St. Paul, Minneapolis & Manitoba Railway Co.,

which Association is now represented by James Smith, its Chairman, party of the first part, and the Pacific Mail Steamship Co., a corporation created by and existing under the laws of the State of New York, party of the second part, made and entered into this first day of October, 1889.

WITNESSETH.

First. That the said party of the first part, in consideration of the undertakings and agreements of the said Steamship Company hereinafter contained, undertakes promises and agrees to and with said Steamship Company, to guarantee, and does hereby guarantee that the gross earnings upon Through freight and passengers between New York and San Francisco, to be provided to said Steamship Company by said party of the first part, shall be seventy-five thousand ($75,000) dollars per month. All the gross earnings of said steamers from through business between New York and San Francisco each way shall go to and belong and be payable to said party of the first part or credited upon its said guarantee to said Steamship Company.

5505 Second. In consideration of said guaranty, of said party of the first part, the said Pacific Mail S. S. Co. covenants—promises and agrees to and with the said party of the first part that it, the said Steamship Company will, at its own cost and expense, dispatch and run from the port of New York for Aspinwall, not more than three nor less than two through steamers per month, and not more than three nor less than two steamers connecting therewith from Panama to San Francisco, and from the Port of San Francisco for Panama not more than three nor less than two through steamers per month, and not more than three nor less than two steamers connecting therewith from Aspinwall to New York, and that said Steamship Company will permit said party of the first part to fix the rates at which all through freight between New York and San Francisco and all passengers shall be transported by the vessels of the Steamship Company from the port of New York to the Port of San Francisco and from the Port of San Francisco to the Port of New York, and will furnish room on each of said steamers from New York and San Francisco, respectively, and their connecting steamers for the transportation of, and will transport from New York to San Francisco and from San Francisco to New York all and only

such passengers and such freight as may be obtained under rates fixed by said party of the first part to an amount as to freight not exceeding six hundred tons of two thousand pounds each in case it runs two steamers per month, and four hundred tons in case it runs three steamers per month upon any one steamer. It being
5506 understood that the deficiency or excess of said six hundred tons or said four hundred tons respectively, of cargo upon any one steamer may be added to or taken from as the case may be, the cargo of any other vessel sailing in same direction within the same calendar month, the intent being that the Steamship Company shall carry monthly an average of six hundred tons per vessel, in case two steamers per month are run, or a monthly average of four hundred tons per vessel, in case three steamers per month are run.

All above steamers to be first class and equal to those now maintained, and in case of the loss of a steamer, or its withdrawal for any cause, the Pacific Mail S. S. Co. shall as soon as possible furnish a steamer of equal capacity and rating. In the event of failure on the part of said Steamship Company to furnish proper and adequate facilities for the transportation of at least one thousand two hundred tons of freight each way per month at the rate of at least four hundred tons per vessel—then the guaranty herein provided for shall be reduced pro rata.

The Steamship Company is to bear and pay all the expenses and charges of every kind of transporting such goods passengers and freight from New York to San Francisco and from San Francisco to New York, including all charges and expenses of every kind in the ports of New York and San Francisco, and all supplies of passengers with food and sleeping accommodation, giving them proper accommodation according to class, and to continue to use all efforts to obtain first class and other passengers as heretofore.

5507 Third. The understanding and intention of this agreement is that the party of the first part shall, through agents appointed by itself, have entire and exclusive control of all the through business of the said Steamship Company between New York and San Francisco each way, and that no through freight or passengers shall be taken except at prices to be fixed by the party of the first part and by its consent, it being understood that said control shall be exercised through the established Agencies of said Steamship Company. If the said Steamship Company shall have room or capacity for more than six hundred tons, in the event of its running two steamers per month each way, or for more than four hundred tons, in the event of its running three steamers per month each way of through freight on any steamer and the party of the first part shall desire to fill it, the said party of the first part shall be at liberty to do so at rates fixed jointly by duly authorized representatives of the parties hereto, the party of the first part to have one-half of the freights on such excess and the Steamship Company the other half.

Fourth. The Pacific Mail S. S. Co. shall render to the party of the first part an account or statement of the transactions for through

business of each month on or before the tenth day of the succeeding month, showing the amount claimed to be due from the party of the first part under this agreement, and on or before the thirteenth day of the succeeding month the Chairman of the party of the first part shall draw his draft in favor of the Pacific Mail S. S. Co. upon each
5508 of the Railroad Companies constituting the party of the first part for the portion payable by it to said Steamship Company on account of the aggregate amount payable by the party of the first part to the said Steamship Company according to the foregoing provisions hereof. The portions of such aggregate amount payable from time to time by the respective Companies forming the party of the first part shall be such as has been or may be fixed or prescribed among themselves, and each of the said Companies forming the party of the first part shall be liable for its own portion of such aggregate amount, but none of such Companies shall be liable for the portion payable by the others or any other of such Companies.

Provided, nevertheless, that in the event of default in payment by any one or more of the Companies constituting the party of the first part of its proportion herein provided for, it shall be optional with the party of the second part to terminate this agreement on giving ten days' notice to the party of the first part through its Chairman.

The party of the first part, or any other Companies constituting the same, may at any time, on demand, examine the books and accounts of the said Steamship Company for the purpose of obtaining full details as to freight and passengers transported by said Steamship Company under this agreement and verifying the accounts and statements of the Steamship Company.

Fifth. It is mutually understood and agreed that this contract shall be deemed to have commenced on the first day of October, 1889, and to include the earnings from through business on steamers sailing on and after that date, and as to each and all of the foregoing
5509 provisions shall continue in force thereafter until ninety days after written notice of the intention to terminate the same shall have been given by either party to the other, with this exception, that if the exclusive contract between the said Steamship Company and the Panama R. R. Co. so far as it refers to the business of the Steamship Company between San Francisco and New York is broken or changed in any respect, or if any other competing line by rail or vessel shall be established between the waters of the Atlantic and Pacific oceans, either overland or via the Isthmus of Panama, that shall affect the through business, concerning which this agreement is made, then the said party of the first part may abrogate and terminate this agreement at any time or not, as it may elect.

Sixth. In regard to freight and passengers received by the Steamship Company at San Francisco, for transportation to Europe via Panama—it is understood that the class of business to be taken and the rates to be charged thereon shall be the subject of conference and mutual agreement between the San Francisco Agency of the Pacific Mail S. S. Co. and the San Francisco General Agent of the party of

the first part to the end that the interests of both parties may be fully protected.

In witness whereof the party of the first part has subscribed its name hereto by its Chairman and the said Steamship Company has caused its corporate seal to be hereto annexed, attested by its Secretary and its name to be signed hereto by its President, the day and year first above written.

Seal
Pacific Mail S. S. Co.

JAMES SMITH,
Chairman
Trans-Continental Association.

GEORGE J. GOULD,
President
Pacific Mail S. S. Co.

Attest:
JOS. HELLEN, *Secretary pro tem.*

5510 Cross-examination by Mr. LOVETT:

Q. I understood you to testify, Mr. Rossbottom, that the Panama Railroad Company in 1905 gave notice to the Pacific Mail Company of terminating the arrangement made in 1902.

A. That is right.

Q. That was after the Government acquired control of the Panama Railroad, wasn't it?

A. That is right.

Q. But, notwthstanding that notice, I understood you to testify that practically the same arrangement had been continued by mutual agreement, without any contract for any definite period.

A. That is right.

Q. Was there any change at all, and if so, what, in the arrangement after 1905 from that provided by the contract of 1902?

A. There was no change at all.

Q. You worked for San Francisco business after 1905, and up to date exclusively with the Pacific Mail?

A. Yes.

Q. How about business to Central America and Mexican ports?

A. Business with Central America and Mexico was worked with the Pacific Mail and also with the Kosmos Line.

Q. There was that change, wasn't there?

A. Yes, sir; but that did not affect the San Francisco business.

Q. But it did affect the Pacific Mail, didn't it?

A. Yes.

Q. Under the contract of 1902 you worked all business for the Central American and Mexican ports with the Pacific Mail?

A. With the Pacific Mail.

5511 Q. Whereas, after 1905, you admitted foreign lines——

A. We did.

Q. ——as connections to handle the business to Central American and foreign ports?

A. Yes. I understood your question to refer only to San Francisco. That is what I had in mind.

Q. No. So the arrangement has been worse for the Pacific Mail since the notice of 1905 than under the written contract before, hasn't it?

A. Oh, yes; because they had some competition after 1905.

Q. They had pretty active competition for the Central American and Mexican business?

A. Only one year. The Kosmos Line has only been granted through-billing privileges about one year.

Q. It was granted through-billing privileges about a year ago?

A. About a year ago.

Q. Didn't it do business before that?

A. Not with the Panama Railroad.

Q. But for the last year, at least, foreign lines have been accorded through-billing privileges for Central American and Mexican ports by The Panama Railroad Company?

A. One foreign line.

Q. Yes; one foreign line. And that was, of course, at the expense of the Pacific Mail?

A. Undoubtedly.

Q. This notice that was given by Mr. Schwerin in his letter of February 18, 1909, and which has been introduced as Complainant's Exhibit 178, was terminating the arrangement that the Panama Railroad Company notified him it was going to terminate in 1905?

A. Yes.

5512 Q. And except for the arrangement he is terminating by this notice of February 18, 1909, it is worse for him than the arrangement the Panama Railroad Company notified him in 1905 that they were going to terminate?

A. Is worse for him?

Q. Yes; in that the Kosmos Line is admitted to the through-billing privileges for the Central American and Mexican business.

A. I don't seem to catch the line of your question.

Q. Well, the point is this: The Panama Railroad Company in 1905 notified the Pacific Mail of the termination of the contract of 1902, did it not?

A. That is right.

Q. And under that contract of 1902 the Panama Railroad Company worked exclusively with the Pacific Mail for Pacific coast business, including Central American and Mexican ports, as well as San Francisco?

A. Yes.

Q. Since 1905 the same arrangement with respect to the interchange of business between the Panama Railroad Company and the Pacific Mail Company, as that provided by the contract of 1902, has continued, except that the Panama Railroad Company

has admitted another line to the Central America and Mexico business with the Pacific Mail?

A. That is right.

Q. The question just now was whether this arrangement that Mr. Schwerin, by his letter of February 18, 1909, gave notice of terminating was not the same arrangement that the Panama Railroad Company undertook to terminate in 1905, except that it is worse for the Pacific Mail, in that the Panama Railroad Company is now doing business to Central American and Mexican ports with the foreign line?

A. No; I don't see that it is any worse for the Pacific Mail.

5513 Q. Don't you think that the present arrangement is worse for the Pacific Mail than that under the contract of 1902?

A. Undoubtedly if they had exclusive privileges over the Panama Railroad. Now they have not. Of course, in that sense, if that is what you are driving at——

Q. That is what I mean.

A. Yes.

Q. Have you got all the correspondence with Mr. Schwerin on this subject?

A. I have.

Q. Have you it with you?

A. I have, yes, sir.

Q. May I see it?

A. Certainly.

(The witness hands paper to Mr. Lovett.)

Mr. LOVETT. In response to the last question, Mr. Rossbottom, you handed me a copy of a letter from the vice-president of the Panama Railroad Company to Mr. Schwerin, in reply to his letter of February 18th (Complainant's Exhibit 178), and I offer that in evidence as part of the correspondence. It is as follows:

3134 "MARCH 1ST, 1909.

R. P. SCHWERIN, Esq.,
120 Broadway, New York.

DEAR MR. SCHWERIN: I own receipt of your letter of the 18th ultimo, and note that instructions were issued to establish and pay an "all-round" East-bound rate of 40c per 100 lbs. or $8 per ton of 2,000 lbs. on San Francisco East-bound "Coast-wise" traffic.

I learned from the San Francisco press that this step has

5514 been widely advertised, but no credit has been given to the Panama Rail Road Company and, on the other hand, much blame is attached to the Pacific Mail Steamship Company for a measure which it is reported was contemplated to forestall the establishment of an independent line.

Noting what you say concerning your Company's loyalty to the working agreement established between us to succeed the contract

which was abrogated by the President of the United States, I confess that our views are slightly divergent in that I had supposed that practices which were in effect at the time that the contract was abrogated—except as to its exclusiveness—were to be continued, unless changed by mutual consent, and I have endeavored to hold to that construction.

As to the granting of through-billing privileges, we classify the schedules of the carriers entitled to receive them, as "Regular" and "Irregular," and those terms refer to the dates of the arrivals and departures of their vessels at our terminals.

"Regular" through-billing contemplates an advertised schedule, strictly adhered to, of at least two arrivals and departures per month.

"Irregular" applies to vessels arriving at any time, without regard to schedule.

The "Regular" through-billing connections pro rate on agreed divisions, settlements are effected monthly in account, and joint interests otherwise protected.

"Irregular" connections are entitled to no such privileges and
5515 are required to prepay, in American gold, at our terminals, the proportion that would accrue to the Panama Rail Road Company and its on-carrier on the other side, out of the agreed through-rate applicable to the cargo handled.

I understand your criticism to refer to the Kosmos Line which formally applied for regular through-billing privileges in the latter part of 1907 and has, from that time until the opening of the present coffee season, protested its intention to establish regular through-billing connection.

As we were mistaken in accepting their assurances and much injury has been done the Panama Route by the aggressive activity of the General Manager of that Company, we have determined to at once serve notice of withdrawal of the privileges of regular connection, the conditions of which have never yet been complied with by the Kosmos Line. The Kosmos Line will thereafter, if it connects with us at all at Panama, be treated strictly on the basis of an irregular connection.

With your remarks concerning the extreme measure of inaugurating as low a rate as 40¢ per 100 lbs., I concur in the main, but you are nevertheless informed of the reasons why it was considered advisable to make a test of this rate Eastbound at this time.

I regret that you should have seen fit to serve the notice of discontinuance, but acknowledge your fairness in making the period of that notice six months from February 12th, 1909, instead of three months, which I could not have opposed as I regarded ninety days the "reasonable period" we might either of us have used—nevertheless
5516 six months was according to contract.

Will you kindly reduce to writing the proposition which you placed before our Board of Directors at the last meeting you attended, in order that it may be intelligently considered and acted upon as, failing a full appreciation of its terms and conditions as stated by

you, no definite action was had before they adjourned to a later meeting.

Truly, yours.

E. A. DRAKE,
Vice-President.

D/3
cc to Capt. Boggs.

Q. Have you any reply made by Mr. Schwerin to Mr. Drake's letter of March 1st?

A. I think I have—if it is not in the bunch I have given you.

Q. It is not here.

A. I can get it in a few moments.

Mr. LOVETT. If you haven't it with you, I will ask you to produce it, and hand it to the reporter, with the understanding that he may write it in as though produced now.

You have also handed me, Mr. Rossbottom, a letter dated May 18, addressed by Mr. Schwerin to Mr. Drake. Is that the letter?

WITNESS. That is the letter.

Mr. LOVETT. I offer that letter in evidence. It reads as follows:

5517 Reply Refer to No. ------

Pacific Mail Steamship Company
Portland & Asiatic Steamship Company
San Francisco & Portland Steamship Company

Office of
R. P. SCHWERIN
Vice-President and General Manager
Third Floor, Flood Building.

120 BROADWAY,
New York, May 18, 1909.

E. A. DRAKE, Esq.,
Vice-Pres., Panama R. R. Co.,
24 State St., New York.

DEAR SIR: Herewith acknowledge your letter of May 13th, and note that the Secretary of War, Mr. J. M. Dickinson, states as follows:

"Ask the Pacific Mail whether or not, in view of large increase of tonnage coming to us by Pacific Mail within the last 30 days, they will withdraw their notice of February 18th. You can state definitely that Panama Railroad Company will not change the present rates nor allow a larger division nor guarantee full cargoes, but will arrange its sailings to make such connections as Pacific Mail may desire, provided sailings are not oftener than every six days."

I believe that I stated to the Board of Directors of the Panama Railroad Company that they could develop tonnage by the Panama Isthmus route provided they made the rates attractive to shippers,

and made them lower than any other route. To develop this fact the Pacific Mail Steamship Company was asked to join in a 40¢ rate from the Pacific Coast to the Atlantic, and we agreed to this for a period of six months.

The rate of 40¢ has developed additional business via the Isthmus Route, but the tonnage has moved without revenue to the carriers, and the Pacific Mail Steamship Company can not afford to continue the arrangement, as much as it might like to do so. The com-
5518 pany is not justified in carrying freights and in performing a service which it knows is bound to net a loss. I quote you below the situation in regard to the movement of wool, rags, hides and hair:

	Propn. M. to W.	At 40¢ per 100# or Panama R. R. Company's.	Pacific Mail S. S. Co.'s proportion 50% each.
Wool	2.7 to 1	$4.00 per 2000#	$1.48 per 40 cu. ft.
Rags	2.9 to 1	$4.00 per 2000#	$1.38 per 40 cu. ft.
Hides	3.5 to 1	$4.00 per 2000#	$1.14 per 40 cu. ft.
Hair	2.5 to 1	$4.00 per 2000#	$1.60 per 40 cu. ft.

Deducting the cost of loading, discharging, checking, and terminal charges to the Panama Railroad Company, rags, which pay us $1.38 per 40 cu. ft., net us 75¢ per cu. ft.

As the Secretary states there will be no change in the rates, no rearrangement of divisions, no guarantee of return cargoes, it is simply impossible for the Pacific Mail Steamship Company to continue under the working agreement, and therefore we can not withdraw the notice sent you in my letter of February 18th, that six months from February 12th, 1909, we will no longer be governed by the working agreement.

STAMP: Panama Railroad Co. Received May 18, 1909 Secretary's Office

Yours truly,

R. P. SCHWERIN,
Vice Pres. & Gen. Mgr.

PENCIL NOTE: 19/5/09 Copy sent Secy. of War & Col. Gorthals S-A.

K.

Q. Mr. Schwerin's letter of May 18, which I have just read into the record, refers to a letter of May 13th, addressed to him by
5519 Mr. Drake. Have you a copy of Mr. Drake's letter of May 13th, with you?

A. I think you have got that, haven't you?

Q. No; it is not here.

A. No; I haven't it with me. I will get that.

Q. You will produce that, will you?

A. I will.

Q. And have that read into the record in the same way?

The witness subsequently handed the reporter a copy of a letter, which reads as follows:

"MAY 13TH, 1909.

R. P. SCHWERIN, Esq.,
Vice-President and General Manager,
Pacific Mail Steamship Company,
120 Broadway, New York.

DEAR SIR: Referring to the notice which you served on us on Feby. 18th last, to discontinue our operations under the existing agreement between us, I am just in receipt of the following cablegram from the Secretary of War, J. M. Dickinson, now at the Isthmus:

"Ask the Pacific Mail whether or not, in view of large increase of tonnage coming to us by Pacific Mail within the last 30 days, they will withdraw their notice of Feby. 18th; you can state definitely that Panama Rail Road Company will not change the present rates nor allow a larger division nor guarantee full cargoes, but will arrange its sailings to make such connections as Pacific Mail may desire, provided sailings are not oftener than every six days."

and would thank you for advice as to the character of reply I
5520 am to make, which reply I have promised would be transmitted at the earliest possible.

Truly yours, E. A. DRAKE, *Vice-President.*"

D. S.

Q. You have also handed me a copy of a letter dated May 24th, addressed by Mr. Drake to Mr. Schwerin, apparently in reply to Mr. Schwerin's letter of May 18th. Is that the copy?

A. That is the letter.

Mr. LOVETT. I offer that in evidence. It reads as follows:

"MAY 24TH, 1909.

2915

R. P. SCHWERIN, Esq.,
Vice-President and General Manager,
Pacific Mail Steamship Company,
120 Broadway, New York City.

DEAR SIR: Referring to your letter of the 18th instant and especially to the concluding paragraph thereof, in which you advise us of your inability to withdraw the notice sent us in your letter of Feby. 18th last, to wit:

"That six months from February 12th, 1909, we will no longer be governed by the working agreement."

will you kindly advise me whether, by that, we are to understand that it is your intention to withdraw your through-billing connection with us only in connection with "Coastwise" traffic, i. e.,

5521 between United States coast ports on both Oceans via the Isthmus of Panama, or whether it is your purpose to discontinue, as well, connection with us at Panama in traffic originating at or destined to Central American and Mexican ports on the Pacific Coast north of Panama.

Truly yours, E. A. DRAKE, *Vice-President.*

D/S

cc to Capt. Boggs."

Q. You have also handed me a letter dated May 25, 1909, addressed to Mr. Drake by Mr. Schwerin, purporting to be in reply to Mr. Drake's letter of May 24th, just read. Is that the letter?

A. That is the letter.

Mr. LOVETT. I offer in evidence Mr. Schwerin's letter of May 25th to Mr. Drake. The same is as follows:

Reply refer to No. ------

" Pacific Mail Steamship Company.
Portland & Asiatic Steamship Company.
San Francisco & Portland Steamship Company.

Office of
R. P. Schwerin,
Vice-President and
General Manager,
Third Floor, Flood Building.

120 BROADWAY,
New York, May 25, 1909.

E. A. DRAKE, Esq.,
Vice Pres., Panama R. R. Co.,
24 State St., New York.

DEAR SIR: Referring to your letter of May 24th, No. 2915:

5522 Please be advised that we have always understood that under the working arrangement we were strictly bound to the interests of the Isthmus Route and should provide regular and consistent service by that route, which we have endeavored to do.

The notice we have sent you is to be interpreted that we are free to work by any other route, or to use the Isthmus Route under the general proclamation of the United States which opens it free to everybody, but that we are in no way bound to perform any regular service or to handle any class of cargo from or to any ports that we do not desire to participate in.

I expect to leave for the Coast during the first week next month and I think it would be advisable, if the Government has thoroughly decided it cannot help us to continue the present arrangement, which we have been running for a number of years at a serious financial loss, to come to some understanding as to what your rates and

divisions will be, provided we bring any cargo to the Isthmus or accept any there from you.

Yours truly,
S/A

R. P. SCHWERIN,
Vice-Pres. & Gen. Mgr.

NOTE IN INK: 6/1/09 Copy sent Mr. Rogers.

STAMP:

Panama Railroad Co.
Received
May 26, 1909.
Secretary's Office."

5523 Q. You have also handed me another letter dated February 18, 1909, addressed to Mr. Drake by Mr. Schwerin. It seems to be upon the same subject as Complainant's Exhibit 178. Why is that?

A. That second letter dated February 18th was received by us, as you will see, by the stamp, May 19th. Mr. Schwerin asked us to consider that letter as a substitute for the one that he wrote on February 19th, because he thought it explained more clearly the position of his company than the original letter of February 18.

Mr. LOVETT. I offer in evidence this second letter, dated February 18, 1909, from Mr. Schwerin to Mr. Drake. The same is as follows:

In reply refer to No. ---

" Pacific Mail Steamship Company
Portland & Asiatic Steamship Company
San Francisco & Portland Steamship Company.

Office of
R. P. Schwerin,
Vice-President and General Manager
Third Floor, Flood Building

120 BROADWAY, NEW YORK,
February 18, 1909.

E. A. DRAKE, Esq.,
Vice-Pres., Panama R. R. Co.,
24 State St., New York.

DEAR SIR: Herewith acknowledge your letter of February 15th, and in compliance with your request I will instruct the Freight Traffic Manager of the Pacific Mail Steamship Co. in San Francisco to publish an all around east-bound rate of 40¢ per 100 lbs., or $8.00 per ton of 2,000 lbs.

5524 I must on this occasion put on record the fact that the Pacific Mail Steamship Co. has earnestly tried to carry out all the terms of the working agreement which was entered into between the Pacific Mail Steamship Co. and the Panama Railroad Co. after the contract of 1902 was abrogated by order of the President of the United States.

It was understood that the Isthmus Route was to be open to all comers on an equal through billing basis, and all lines would be compelled to publish their itinerary in advance and maintain a regular steamship service.

The Panama Railroad Co. has enforced this rule in connection with the Pacific Mail Steamship Co., although it has not strictly enforced the same in connection with a foreign tramp line of irregular service, hence the Pacific Mail Steamship Co. has worked under a heavy disadvantage and to its serious injury.

Under the circumstances the Pacific Mail Steamship Co. felt that the maintenance of the working agreement has been a very one-sided affair for the reason it was held to a strict accountability as to service and connection, while the tramps were allowed to come and go at pleasure.

When the contract was originally made it was never contemplated, except in cases of extreme measures or in traffic warfare, that the rates would go as low as 40¢ per 100 lbs., in fact these rates were considered minimum and unremunerative rates, and were only put in the contract to afford a basis of further mutual understanding in case
5525 a rate war should be inaugurated. Such rates, as you know, are absolutely unremunerative and no line could possibly exist upon this route whose revenue was obtainable from such remuneration.

The through rate of $8.00 per ton divides on the basis of $4.00 to the Panama Railroad Company and $4.00 to the Pacific Mail Steamship Co. From the $4.00 accruing to the Pacific Mail Steamship Company, 80¢ must be paid to the Panama Railroad Company for terminal charges and 10¢ for cranage, a total of 90¢, leaving a balance of $3.10 for the haul, San Francisco to La Boca. Taking into consideration the cost of loading at San Francisco of 50¢ per ton and checking 10¢, and discharge at La Boca of 25¢ and checking 7¢, or a total of 92¢, the net balance accruing would leave the Pacific Mail Steamship Company a net result of $2.18 for the haul of over 3,000 miles.

As I stated to the Board of Directors of the Panama Railroad Company in Washington, I desire to now put on record a six months' notice from February 12th, 1909, that we will no longer be governed by the terms of this working agreement. I had hoped to receive before this some advice as to the decision of the Board of Directors of the Panama Railroad Company in regard to the proposition which I placed before them. Will you kindly advise me in regard to this at your earliest convenience?

Yours, truly,

R. P. SCHWERIN,
Vice Pres. & Gen. Mgr."

Note in ink:

J. W. B. This was presented by Mr. S. with a request
5526 that for record purposes it be substituted in our files for his first letter of same date, which was hurriedly prepared & imperfect.

EAD.

Note in ink:
Revised form of original of same date in this file. D.
Note in pencil:
19/5/09. Copy sent Capt. Boggs. K.
Stamp:
Panama Railroad Co.
Received
May 19, 1909
Vice-President's
Office.

Q. As a matter of fact, the arrangements have just been made for continuing the present arrangement indefinitely—that is, withdrawing or modifying this notice of termination given by Mr. Schwerin, have they not?

A. We haven't been so advised yet.

Q. Didn't you see something in the morning paper about it this morning?

A. No; I didn't.

Q. Despatches from Washington?

A. I didn't see anything.

Q. I don't mean to give any information myself on the subject, because I have none; but there was such a report in the morning papers, and I didn't know whether you were informed of it.

A. We haven't been officially advised if there has been any change in that notice. What we have been advised is that Mr. Schwerin has agreed to have his traffic men and our traffic men get together previous to the expiration of this notice on August 13th and see if they can devise some plan that they can recommend to the Secretary of War for a continuance of our relations. When that plan
5527 has been submitted to the Secretary of War, the Pacific Mail have agreed to give him 60 days within which to make up his mind whether or not to accept those conditions.

Q. That means, doesn't it, as you understand it, that if they do not make that arrangement more than 60 days before August 13th, he will still have 60 days after he gets that notice?

A. No, I understand that Mr. Schwerin has intimated that the agreement between the traffic men must be in the hands of the Secretary of War before August 13th.

Q. Suppose it gets there on August 1st; do you understand the Secretary is to have 60 days, then, after August 1st?

A. After August 13th.

Q. In other words, he is to have 60 days after receiving this proposition or recommendation?

A. Well, I don't know whether it is Mr. Schwerin's intention to give him 60 days' notice after he receives it, or 60 days after August 13th; but I understand 60 days after August 13th.

Q. Who makes the transcontinental rates by the Panama route?

A. Our traffic department and the vice-president.

Q. As a matter of fact, your company makes the rates, doesn't it?

A. From New York to San Francisco.

Q. From New York to San Francisco?

A. And the Pacific Mail makes the rates from San Francisco to New York.

Q. The Pacific Mail has no voice in making the rates from New York to San Francisco?

A. They have a voice in this way: that according to our
5528 existing practices we cannot go below $8 a ton, unless we absorb the difference out of our own proportion.

Q. That is the arrangement, is it?

Mr. SEVERANCE. That is the contract.

A. That is the contract of 1902.

Q. You make them, except that you cannot go below $8 a ton?

A. Except at our own expense.

Q. You can, if you are willing to absorb the reduction out of your own share?

A. Yes.

Q. How about the Pacific Mail rates from the Pacific Coast to New York?

A. The Pacific Mail have the right to make rates from San Francisco or Pacific coast points to New York; and the contract of 1902 provides that either party may insist upon the other establishing rates as low as $8, either from New York to San Francisco or from San Francisco to New York.

Q. So, if the rates made by the Pacific Mail from San Francisco to New York were not as low as $8 a ton, the Panama Railroad Company would have a right to insist upon a reduction of them to that amount?

A. That is what we did, and that is the reason we have this notice of discontinuance of the relations with the Pacific Mail.

Q. You insisted on a reduction of those rates, and that was the subject of the correspondence prior to Mr. Schwerin's letter of February 18th?

A. That is right.

Q. How much would the Pacific Mail get out of an $8 rate from San Francisco to New York?

A. They get 50 per cent as their proportion of all freight from San Francisco to New York.

5529 Q. As a matter of fact, your ships from New York to Panama are well loaded, ordinarily, with supplies and materials for the Panama Canal, are they not?

A. Oh, no; that is only a part of their cargo.

Q. I know, but your ships carry a great deal of the supplies and material for the Panama Canal work, don't they?

A. Yes; we carry quite a large amount of supplies for the canal.

Q. You carry some transcontinental business, but the great bulk of your traffic to Panama is of the Panama material and supplies, isn't it?

A. Well, I should say the larger part of it was.

Q. Whereas northbound you are dependent on Pacific coast cargo, aren't you?

A. We are, absolutely.

Q. So, you could afford to carry business from Panama to New York a great deal cheaper than the Pacific Mail could afford to carry it from San Francisco to Panama, because your ships go down loaded with canal material and supplies and come back empty, unless they get it from the Pacific coast; isn't that true?

A. We can afford to carry freight homeward cheaper than we can outward, because we have a fairly good outward cargo and we have very little homeward cargo, and everything secured (except the cost of handling) just means so much gain to us.

Q. The Pacific Mail is not in that situation, is it?

A. They are on the business from Panama to San Francisco.

Q. I know, but they do not carry any canal supplies and material of any consequence, do they?

5530 A. No, but they depend on us to bring them San Francisco cargo to Panama.

Q. Yes, but they do not have load down with the canal material and supplies?

A. No, but they are practically loaded from San Francisco on the way down to Panama with local cargo to Central America and Mexico.

Q. But not with the Panama supplies and material?

A. No; very little cargo except the San Francisco cargo; and when they get down into Central American ports during the coffee season, with coffee from Central America.

Q. They are dependent on you, though, for Atlantic port business for their northbound?

A. They are dependent upon the Panama Railroad—not so much our steamship line, because there is a large business from Europe that is brought by the Pacific Mail and delivered to them at Panama.

Q. But in so far as they are dependent on you for tonnage from Atlantic ports to Panama, that tonnage, so far as you are concerned, is subordinate to the requirements of the canal, isn't it?

A. I don't think I could say that, because if we did not have San Francisco and Central American business, our line would be conducted at a loss.

Q. But if you have a cargo of material and supplies for the canal, you would not take any business for San Francisco, would you?

A. Well, but we never have full cargoes of supplies and materials.

Q. Don't you always give preference to canal supplies and material?

A. No, except on the morning of sailing. If on the morning
5531 of sailing we receive word from the Washington office or the Commission that they are obliged to have certain supplies furnished promptly, then we make room for them; otherwise we give no preference to canal business over commercial business.

Q. When there is a large volume of canal supplies moving, you are not so active in getting business for the Pacific coast, are you?

A. We are always active. You see there are two other lines running down to Colon—foreign lines. They carry Panama business and Central America and the South Pacific coast business.

Q. You divide that with foreign lines anyway, but I am speaking of San Francisco business. You do not have any competition by other lines for San Francisco business?

A. No; and we have more room for San Francisco business because of the competition of these foreign lines, on foreign business, to South America and Central America.

Q. The only time that you really give preference to the material and supplies for the canal is on the morning of sailing?

A. Yes, in connection with rush shipments that they are obliged to have go forward.

Q. Then you refuse business for San Francisco or any other port, if necessary?

A. We shut it out or hold it over until the next steamer, if that is necessary.

Q. I will ask you to produce, for I want to put it in the record in connection with your testimony, the correspondence with Schwerin in which you give your reasons for wanting to put in this 40-cent rate.

5532 A. All right; I will hand it to you.

Q. Now, with reference to the terminal charge at La Boca; that is paid by the Pacific Mail?

A. That is paid always by the Pacific carrier.

Q. And it is paid to whom?

A. To the Panama Railroad Company.

Q. That is in addition to the division?

A. They pay that out of their division or out of their proportion.

Q. When you say this $8 rate is divided equally between the Panama Railroad Company and the Pacific Mail, that is not quite accurate, is it?

A. Yes. The proportions are, as I have stated, 50 per cent to each company. Out of the Pacific Mail's proportion, they of course have to pay their stevedore charges at San Francisco, their wharfage charges at San Francisco and their wharfage charges at La Boca. It is practically a wharfage charge.

Q. But they pay it to the Panama Railroad?

A. They pay it to the Panama Railroad.

Q. And how much does that amount to?

A. 80 cents a ton for wharfage and 10 cents a ton if they want to avail of the electric cranes that we have on the pier, rather than their own windlass.

Q. And do they usually avail of them?

A. Yes, I think they do.

Q. The practical result is, then, that out of this $8 a ton rate the Pacific Mail gets $3.10 and the Panama Railroad Company gets $4.90?

A. Yes.

Q. You call it "wharfage," but as a matter of fact that is
5533 the money that each company gets out of it?

A. Yes. In the operation of a steamship line, the wharfage is always considered part of the steamship expense, no matter to whom they pay it, whether they pay it to the city or the railroad company, if the railroad company is the owner of the pier.

Q. Yes, but you have got the wharves there and they do not earn any money unless somebody is paying for the use of them?

A. That is right.

Q. As a matter of fact, that is the way they divide—$3.10 and $4.90?

A. That is the net division on an $8-rate.

Q. Don't you think it is quite obvious under those circumstances, Mr. Rossbottom, that the Panama Railroad Company can better afford to do business at $8 a ton than the Pacific Mail?

A. No, I don't think so.

Q. Now, if you don't get this business by making the $8-rate, your wharf department would not get its wharfage out of it, would it?

A. We wouldn't get it from the Pacific Mail, but of course we have other lines that are running to La Boca wharf.

Q. From San Francisco?

A. No, from Central America and Mexico and South Pacific ports.

Q. I am speaking of the $8-rate from San Francisco.

A. Yes.

Q. The only way you can get that business for your wharfage is through the Pacific Mail?

A. At present, yes.

Q. And so in demanding an $8-rate, you are drawing business not only for your ships, but also for your wharves, aren't you?

A. Yes.

5534 Re-direct examination by Mr. SEVERANCE:

Q. You have to stand the expense of handling the cargoes on the Atlantic side at Colon, don't you?

A. Oh, yes.

Q. So that you are on an equality with the Pacific Mail in that; they stand it on one side and you on the other, except that you own the wharf?

A. The Panama Railroad owns the wharves on both sides.

Q. But you have an investment in those wharves?

A. Yes. According to our books the wharves do not pay us. We do not get enough traffic over them to pay us for the investment.

Q. That is, to pay interest on the investment?

A. Interest, and depreciation of the property.

Q. You spoke of the Pacific Mail boats loading south-bound out of San Francisco. Judge Lovett was asking you whether they took supplies to Panama. Do you know whether, as a matter of fact, transcontinental traffic is at times offered, which they will not take

because they can get more money out of hauling stuff to Central America and Mexican ports?

A. We have instances where they have refused freight, which have been reported to us by our San Francisco agent. The Pacific Mail have claimed that they have refused it because the space on their steamers was already filled by other freight.

Q. Do the Pacific Mail boats stop any place in California, with the exception of San Francisco?

A. No.

Q. Do the German boats—the Kosmos line?

A. I do not think they do.

5535 Q. You don't know, or do you know?

A. I know that as far as their connection with the Panama route is concerned, they do not; but I do not know whether they stop at other California ports in connection with their Tehuantepec route—Salina Cruz.

Q. They interchange with the Tehuantepec route, do they?

A. Interchange with the Tehuantepec also.

Q. Does the traffic move to Colon from any other American ports than New York?

A. Yes; from Galveston, New Orleans and Baltimore.

Q. San Francisco freight?

A. No, not San Francisco freight. Those are all foreign steamers; they cannot carry San Francisco freight.

Q. Are there any American registers into Colon except your company?

A. None. Our line is the only American steamship line running to Colon.

Q. So that all the traffic for San Francisco out of New York, or out of any port in the United States, which goes by the Panama route, goes over your steamers?

A. That is right.

Q. And on the Pacific coast, over the steamers of the Pacific Mail?

A. That is right.

Q. Do you know the length of time it takes Pacific Mail ships to go from San Francisco to Panama or La Boca?

A. The reports we have indicate that they take from twenty-one to twenty-four days.

Q. How long does it take your ships to go from New York to Colon?

5536 A. Five and a half days and six and a half days—according to the size of the steamer.

Q. What are the respective distances?

A. From New York to Colon is 1976 miles. I think from San Francisco to Panama is about 3200 miles.

Q. Less than twice as far?

A. Yes.

Q. Does that rate of $8 a ton apply to all classes of freight?

A. All classes of freight from San Francisco to New York.

Q. That rate is still in force?

A. Still in force.

Q. Does this German line stop at Central American and Mexican ports also?

A. It does.

Q. You speak of operating in connection with the Tehuantepec route. I assume they stop at that port; but do they stop at other ports? Do they make the same ports practically that the Pacific Mail do?

A. Practically, yes.

Q. Do they deliver business to you at La Boca, destined to New York, from Mexican and Central American ports?

A. I don't think that they ever received any business destined to New York from the Kosmos Line. We have only had about twelve or thirteen calls of their steamers during the time that they have been in through-billing relations with us, and most of the business is to Hamburg, London and European ports. Sometimes they call there with only passengers and no freight at all.

Q. Is that business for European ports taken direct to Europe from Colon?

A. From Colon by the direct line.

Q. So that the only interest you have in it is the rail-haul across the Isthmus?

A. That is right.

5537 Q. With reference to this scheme of getting together again on some deal—I mean the Pacific Mail and the Panama Railroad: as I understand you, the traffic men of the Pacific Mail and your company are to have a meeting. For what purpose?

A. The Pacific Mail will present, I presume, their reasons why they should get either an increased percentage or else a fixed return for their haul from San Francisco to Panama.

Q. Has there been any talk about increasing the rates?

A. From San Francisco to New York?

Q. Yes. Is that a matter that is to be taken up by these traffic men?

A. I presume that is one of the questions that will be discussed. If the Pacific Mail insist upon a larger revenue than they are now getting, it means either that their proportion must be increased at the expense of the Panama Railroad, or that higher rates will have to be established.

Q. The extension of the time that the arrangement is to continue—sixty days beyond August 13th, or whatever it is—is all dependent upon the Panama Railroad Company's representative meeting the views of the Pacific Mail representatives, is it not?

A. And submitting them to the Secretary of War, and the Secretary of War approving of the plan.

Q. Yes, I understand; but you said the Secretary was to have sixty days in which to make up his mind after these negotiations are concluded and the conclusions submitted to him?

A. Yes.

Q. But I say, unless the traffic manager of the Panama Railroad Company meets the views of the Pacific Mail traffic manager, there will be nothing to submit to the Secretary of War,
5538 will there, and the notice to quit on August 13th will remain effective?

A. That is about the size of it.

Q. Have the traffic men had any meeting yet, as far as you know?

A. Not yet.

Q. Do you know whether the Pacific Mail Steamship Company takes any supplies to Panama for the Canal?

A. The Pacific Mail has a good local business to Panama—that is, merchandise consigned to the local merchants there; but I do not know that they have very much business for the Isthmian Canal Commission. Of course there would be more or less of it, but I do not think it is a very large amount.

Q. Come back to this notice that you gave them in 1905: did that contemplate that you would refuse to interchange business with them, or simply that you would refuse to interchange it exclusively?

A. I have got the notice here. Suppose I read it to you?

(Witness hands paper to Mr. Severance.)

Mr. LOVETT. What is that?

Mr. SEVERANCE. This is the notice to the Pacific Mail Steamship Company.

Mr. LOVETT. 1905?

WITNESS. 1905—or for the contract of 1905.

The paper produced by the witness was marked Complainant's Exhibit 182½ (Rossbottom), and is as follows:

5539 "Panama Rail Road Company
Panama Rail Road
Panama Rail Road Steamship Line.

General offices:
24 State st.
In reply please address
Panama R. R. Co.
And refer to
File No. ____

NEW YORK, *January 12th, 1905.*

Messrs. THE PACIFIC MAIL STEAMSHIP CO.,
New York.

GENTLEMEN: Whereas, by Article 21 of the Traffic Agreement entered into between the Panama Rail Road Company and the Pacific Mail Steamship Company, dated June 11th, 1902, the duration of said Traffic Agreement is made subject to the provisions of a contemporaneous agreement between the said parties thereto of even date therewith.

And whereas, by Article 4 of said contemporaneous agreement, known as "The Supplemental Contract," it is provided and agreed:

"that if at any time during the continuance of said Traffic "Agreement, a majority of the shares of the Rail Road Com- "pany or its Rail Road property shall be purchased or acquired "by the United States of America, or by any person or persons "representing it, or acting in its behalf, then either party "hereto may give notice in writing to the other of its intention "to terminate said Traffic Agreement, and at the expiration of "six months from the giving of such notice, the said Traffic
5540 "Agreement and the previous articles of this agreement shall "terminate, come to an end, and be utterly null and void "thenceforth, anything in said Traffic Agreement or herein "contained to the contrary notwithstanding."

And whereas, a majority of the shares of the said Panama Rail Road Company has been purchased by the United States of America,

And whereas, at a meeting of the Board of Directors of the Panama Rail Road Company duly called and held on this 12th day of January, 1905, the notice and action herein contained were duly authorized to be given and taken.

Now therefore, the Panama Rail Road Company hereby gives notice to you, the Pacific Mail Steamship Company, of its intention to terminate said traffic agreement, and that at the expiration of six months from the giving of this notice, the said Traffic Agreement and Articles first, second and third of said Supplemental Agreement will terminate, come to an end and be utterly null and void, anything in either of said agreements contained to the contrary notwithstanding. Dated New York, January 12th, 1905.

PANAMA RAIL ROAD COMPANY,
By J. EDWARD SIMMONS, *President.*

(Seal)
{Panama Railroad Company
New York 1849.}

ATTEST:
E. A. DRAKE,
Secretary."

5541 Q. Was it before or after you gave this notice that you had the negotiations with the Pacific Mail which resulted in the tentative working agreement that you have testified to?

A. After this notice was issued.

Q. And before it became effective?

A. And before it became effective.

Q. I think you testified in answer to Judge Lovett that there had been no change whatever in the method of interchange of business, except that it was no longer exclusive?

A. That is it.

Q. That is, exclusive as to foreign business?

A. Exclusive as to any business.

Q. Well, it has been necessarily exclusive as to San Francisco business, because there is no other line to take the business?

A. That is right.

Q. How frequently do your ships sail out of New York for Colon?

A. Under our present schedule we sail every six days.

Q. How frequently do the Pacific Mail ships sail from Panama to San Francisco?

A. They now sail three times a month, according to their schedule. Once in a while, of course, they skip a departure, as they did at the time they lost one of their steamers, about two or three months ago.

Q. How long have they been having ten days sailing?

A. I could not say positively, but I think they have had the ten days schedule in operation for about three years. Previous to that they had a weekly service.

Q. Was the weekly sailing changed to the ten days sailing after or before you gave notice of the cancellation of this
5542 contract?

A. Well, I couldn't state positively. Of course I could verify it from the records.

Q. But you don't remember?

A. I don't remember.

Re-cross examination, by Mr. LOVETT:

Q. You generally have full cargoes southbound, don't you, Mr. Rossbottom?

A. For the past three months we have had fairly full cargoes southbound. Previous to that time we were sailing with about half cargoes, for nearly a year.

Q. And your cargo is made up of material and supplies for the canal and freight for Central American and Mexican ports and San Francisco?

A. And South Pacific.

Q. And South Pacific?

A. That is, all the country south of Panama.

Q. And such business as goes to Central American and Mexican ports and South Pacific ports you interchange with foreign lines, as well as the Pacific Mail?

A. No. On business south of Panama we interchange with foreign lines—that is, with the Pacific Steam Navigation Company and the Chilian Company, because the Pacific Mail does not run south of Panama, but on Central American and Mexican business we interchange traffic only with the Pacific Mail.

Q. I think you testified a while ago that you admitted the Kosmos Line?

A. We have; but there has been no cargo offered to us for transportation by the Kosmos Line from Panama.

Q. You haven't interchanged with them at all, then?

A. Yes; they bring some cargo to us from Central America to Europe.

5543 Q. But you deliver none to them?

A. We deliver none to them, unless the consignee requests that the final carrier be the Kosmos Line, but we have received no such request yet.

Q. But you are at liberty now to do so if you want to?

A. Not without the consent of the shipper.

Q. I mean so far as the Pacific Mail is concerned. I say you are not bound exclusively with the Pacific Mail?

A. No, we are not bound exclusively with the Pacific Mail; but of course we could not divert any cargo to the Kosmos Line without the consent of the shipper.

Q. But the shipper has a right to send it that way if he wants to?

A. Undoubtedly.

Q. And if he does not give any directions, you have a right to ship that way, haven't you?

A. Well, he does give directions.

Q. But if he should not give directions as to which line?

A. Then we would have the option to give it to whichever line we chose.

Q. That is what I thought. But your shipments north-bound run light?

A. From Colon, yes.

Q. Now, wasn't the purpose of this $8-rate to try to force cargo that way, in order to give you a north-bound load?

A. Yes.

Q. Isn't this $8-rate—40 cents a hundred—an extraordinarily low rate for business between San Francisco and New York?

A. No. When we operated our own line we established rates as low as $6 a ton from San Francisco to New York.

Q. How long ago was that?

A. That was in about 1894 or 1895.

Q. Was that an all-round rate, applicable to everything, or only to special articles?

A. No, not an all-round rate.

5544 Q. Well, there is quite a difference, isn't there?

A. No, there isn't much difference. There are only about half a dozen commodities coming from San Francisco to New York. The majority of them are goods that take the low rate.

Q. You only made it, though, on certain commodities?

A. Yes.

Q. As a matter of fact, wasn't that a very unprofitable enterprise for your company? Didn't you lose money on those Pacific coast lines?

A. We lost money on the steamship line because we ran a direct line between San Francisco and Panama; but, of course, the earnings of the railroad and the earnings of the steamship line on the Atlantic helped to reduce the loss on the Pacific service.

Q. In doing that part of the business that the Pacific Mail does now, you lost money on it, didn't you?

A. Yes.

Q. In your accounting in your rates, do you divide the earnings of the railroad and the wharf at Colon and the ships between New York and Colon, or do you treat them as a unit? The 40-per cent division that you get, do you subdivide it between your railroad and your wharf at Colon and your Atlantic ships?

A. We subdivide it in this way: A certain proportion goes to the railroad and a certain proportion goes to the steamship line. Out of the steamship line it pays the wharfage at Colon.

Q. What are those percentages?

A. I think on San Francisco business we give the railroad 22-½ per cent, and the steamship line 27-½. That is my recollection. Of course, I could verify that.

Q. Of the 40 per cent?

A. Of the 100 per cent.

5545 Q. I mean of the 40 per cent. of the total.

A. Yes.

Q. And what does the steamship company give the wharf company at Colon?

A. It pays wharfage charges of $35 a day.

Q. When the ships are there?

A. Yes.

Q. And how does that compare with the wharfage that the Pacific Mail pays at Panama or La Boca? It is very much less, isn't it?

A. Well, it all depends on the cargo brought by the ship; but I should judge it would be less.

Q. Very much less, isn't it, as a practical matter? Suppose the Atlantic boats pay the same wharfage at Colon that the Pacific Mail pays at La Boca—so much per ton; the expense would be a great deal heavier, wouldn't it, than $35 a day?

A. Just wait and I can figure it out in a minute.

Q. Have you got those figures?

A. Yes. Take a steamer operating at Colon, being there seven days, the cost of wharfage at $35 a day would be $245. Now, one of our small steamers will carry about 2,000 tons both ways. If that steamer were going to La Boca, it would have to pay 80 cents a ton on 2,000 tons.

Q. And 10 cents a ton if it used the electric crane?

A. Well, you could not very well count that in, because we do not use any cranes on the Atlantic side. You see we would have nothing to offset that. That would be $1,600 on 2,000 tons at La Boca.

Q. And at $35 a day it is how much?

A. $245—that is, seven days.

Q. You say that according to your books your terminals at

5546 Colon lose money?

Mr. SEVERANCE. No; at Panama.

A. The terminals at Panama, principally.

Q. Don't they lose money at Colon, or do you keep them separate?

A. No; they are not kept separate, but we have not such a large investment in the wharves at Colon as we have at La Boca.

Q. How about your ships? Do they earn money? Are they profitable?

A. On the Atlantic side?

Q. Yes.

A. They are now on a profitable basis.

Q. What do you mean by now? how long since?

A. Well, last year they were not.

Q. Were they generally unprofitable up to last year?

A. Yes.

Q. How about your railroad?

A. The railroad has always been operated at a profit, except possibly during the period from 1893 to 1895.

Q. Do you know anything about the relative expense of operating boats on the Atlantic and the Pacific?

A. No; I am not qualified to testify on that.

Q. You do know there is a very great difference in the matter of fuel—coal—don't you?

A. Yes, there is.

Q. It is enormously expensive on the Pacific as compared with what it is on the Atlantic, isn't it?

A. We found it so when we operated the Pacific line.

Q. There has'nt been any great scramble by American lines to take this business on the Pacific coast at the 15½ cent rate, has there?

5547 A. I haven't noticed any scramble. We have received propositions, or intimations, from ship owners that if they would be given exclusive privileges on the San Francisco business, they would be glad to consider it; but of course we cannot give them exclusive privileges on any business.

Q. They would be glad to consider it on an $8 rate?

A. On any rate, as long as they had the exclusive privilege.

Q. Had a voice in the rate?

A. Yes.

Q. Your boats make no stops between New York and Colon, do they?

A. No; they run direct.

Q. And the Pacific Mail between San Francisco and Panama make ten or eleven stops, don't they?

A. Yes, they do.

By Mr. SEVERANCE:

Q. That division of 27½ per cent to the steamship line would be $2.20 a ton?

A. Yes.

Q. Out of that you have to pay your wharfage charges at Colon of $35 a day and whatever terminal expenses there are in New York?

A. Yes; and stevedoring at both ends; and port charges at Colon.

Q. So that, even taking out the 90 cents, as Judge Lovett did, from the $4 accruing to the Pacific Mail, leaving them $3.10, they have $3.10 as against your steamship line $2.20, and out of the $2.20 you have to pay your wharfage charges?

A. Yes.

Q. To make a comparison between the two?

A. Yes.

Q. You said the commodities moving from San Francisco to New York were few in number?

A. Yes.

Q. What are they?

5548 A. Wine, canned goods, lead, wool, rags, horns. Those are about the principal commodities, as I recollect them now.

Q. You say that your ships that didn't make money ran direct from San Francisco to Panama?

A. They did.

Q. They did not have the advantage of this Central American and Mexican business that is enjoyed by the Pacific Mail?

A. No, they did not.

By Mr. LOVETT:

Q. What does it get on the Government's supplies for the Panama Canal?

A. The rate to the Government, I think, is $4.50 a ton.

Q. $4.50 a ton?

A. That is on the business that the Government ships from New York; but most of the material now, you know, is delivered at Colon by the contractor.

Q. What do you get on that?

A. We get as low as $2.25 a ton.

Q. And as high as what?

A. According to the measurement and the quality of the goods, I should judge as high as $5.50 a ton.

Q. What did you say was the distance from New York to Colon?

A. 1976 miles.

Q. And from San Francisco to Panama or La Boca?

A. Well, my answer was approximately 3200 miles. Of course I am not sure about that, but I think that is pretty close to it.

Mr. SEVERANCE. It is about 3,000 miles.

Mr. LOVETT. 200 miles more than 3,000.

Mr. SEVERANCE. Well, I am not sure it is.

Q. Your understanding is it is about 3200 miles; the other is about 1960.

5549 A. 1976. I know what it is exactly between New York and Colon.

Q. According to this division made by the Panama Railroad Company between its ships and its rails and its wharves, the Atlantic ships of the Panama Railroad Company get about 11 cents a hundred, do they not?

A. They get 27½ per cent of, say, a $4.00 rate. Is that what you are talking about?

Mr. SEVERANCE. It is exactly 11 cents a hundred; but out of that they have to pay their wharfage?

WITNESS. Yes.

Q. And the Pacific would get 15½ cents a hundred, wouldn't they?

Mr. SEVERANCE. 20.

A. No; they get 20 cents a hundred.

Q. I am deducting the wharfage. Assuming that they get $3.10, that is 15½ cents a hundred, isn't it?

A. Then the comparison would hardly be fair, because you do not deduct the wharfage and other charges.

Q. But you do not pay any wharfage of any consequence on the Atlantic side. You pay $35 a day, which, for seven days, is $245. The Pacific Mail pays 90 cents a ton.

Mr. SEVERANCE. 80 cents. He says they do not use that on the Atlantic side at all.

Mr. LOVETT. Well, they use it on the Pacific side.

Mr. SEVERANCE. If they want to. It is optional with them.

Q. $3.10 a ton is about 15 cents a hundred, isn't it?

A. Yes.

Q. So, if I am correct in assuming that the proper figure is, according to your statement of the wharfage at Panama of $3.10
5550 net to the Pacific Mail, the Pacific Mail gets 15½ cents a hundred for the haul of 3,200 miles from San Francisco to Panama, and the Atlantic boats of the Panama Railroad Company get 11 cents a hundred for the haul of 1976 miles from New York to Colon?

A. Yes.

(A recess was here taken until 3 o'clock p. m.)

By Mr. SEVERANCE:

Q. Was the 40-cents a hundred, or $8 a ton rate, which is mentioned in the correspondence between Mr. Drake and Mr. Schwerin, the east-bound rate, or both east-bound and west-bound?

A. Only east-bound.

Q. That is, from San Francisco to New York?

A. From San Francisco to New York, yes.

Q. How were the rates west-bound, as compared with that?

A. The minimum rate west-bound is 45 cents a hundred pounds, and our rates west-bound are figured on a basis of a percentage below the rates of the transcontinental railroads.

Q. What is the differential?

A. 30 per cent and 40 per cent on less than carloads and carloads.

A. That is, 30 per cent on less than carloads?

A. 30 per cent on less than carloads.

Q. And 40 per cent on carloads?

A. Yes.

Q. And how long has that been so?

A. That percentage was changed from 20 and 30 per cent
5551 about a year and a half ago.

Q. At whose instance?

A. The Panama Railroad Company. We found we could not get enough business at the reduction of 20 and 30 per cent below the transcontinental railroad rates, and so we increased the percentage.

Q. How do your westbound rates compare with the American-Hawaiian rates?

A. In some instances the American-Hawaiian rates are lower than ours, and in other instances they are higher than ours.

Q. How do they average?

A. They are supposed to be pretty nearly the same thing.

Q. They are not made on any similar basis?

A. I don't know how the American-Hawaiian rates are made.

Q. The stock in the Panama railroad is owned by the United States Government?

A. Yes.

Q. Purchased at the time of the Panama Canal purchase; it was part of that purchase, wasn't it?

A. It was part of that purchase. Some 69,000 shares were purchased from the old Canal Company, and the balance was purchased by the Government from the individual owners.

Q. But the control was purchased at that time?

A. Oh, yes.

By Mr. LOVETT:

Q. Mr. Rossbottom, you were asked this forenoon to produce any correspondence between the Panama Railroad and Mr. Schwerin,
of the Pacific Mail Company, immediately preceding his notice
5552 of February 18th that brought about that notice, or had to do with the putting in of the $8 a ton rate from San Francisco. What have you found?

A. The first is our letter to the Pacific Mail Steamship Company, dated February 15, 1909.

Q. Have you a copy of that letter?

A. This is it.

Q. Please read it into the record.

A. (Reading:)

"FEBRUARY 15TH, 1909.

R. P. SCHWERIN, Esq.,
Vice-President & General Manager,
Pacific Mail Steamship Company,
120 Broadway, New York.

DEAR SIR:—Following the consideration given to the subject with your good-self by the writer and the other members of our Board of Directors at our interviews in Washington, I beg to request that you will at once instruct the Traffic Manager of your Company in San Francisco to publish an all round east-bound rate of 40¢ per 100 lbs. or $8 per ton of 2,000 lbs., i. e., a rate based on weight only.

The occasion for this action is well understood to be the necessity through competition and otherwise for east-bound cargo to load our ships which are sailing from Colon to New York practically in ballast. The reverse is the condition on the outward voyages, hence there is no necessity at this time for an equivalent reduction on west-bound rates, consideration of which is, therefore, indefinitely postponed.

Will you kindly arrange that this new rate be given the widest publicity on the Pacific coast, in order that a fair test
5553 may be made of the disposition of San Francisco shippers to favor our joint route on the basis of lowest rates obtainable.

Truly, yours,

E. A. DRAKE,
Vice-President."

D/S

Q. That is the only correspondence connected with that?

A. There is the reply of the Pacific Mail Steamship Company; I think that was put in this morning.

Mr. SEVERANCE. Yes; their reply of February 18th.

WITNESS. Their reply of February 18th.

Q. I also asked you whether you could find any answer made by Mr. Schwerin to Mr. Drake's letter of March 1st, that was put in this morning. Have you found in your file any answer to that letter?

A. No; I have no reply to that letter.

Q. Did you find any correspondence on this subject between Mr. Drake and Mr. Schwerin, between March 1st and May 24th.

A. Yes; Mr. Drake's letter of May 13th.

Q. To Mr. Schwerin?

A. To Mr. Schwerin.

Q. Have you a copy of that?

A. Yes; I have.

Q. Read it, please.

A. (Reading:)

"MAY 13TH, 1909.

R. P. SCHWERIN, Esq.,
Vice-President and General Manager,
Pacific Mail Steamship Company,
120 Broadway, New York.

DEAR SIR: Referring to the notice which you served on us
5554 on Feby. 18th last, to discontinue our operations under the existing agreement between us, I am just in receipt of the following cablegram from the Secretary of War, J. M. Dickinson, now at the Isthmus:

"Ask the Pacific Mail whether or not, in view of large increase of tonnage coming to us by Pacific Mail within the last 30 days, they will withdraw their notice of Feby. 18th; you can state definitely that Panama Railroad Company will not change the present rates nor allow a larger division nor guarantee full cargoes, but will arrange its sailings to make such connections as Pacific Mail may desire, provided sailings are not oftener than every six days."

and would thank you for advice as to the character of reply I am to make, which reply I have promised would be transmitted at the earliest possible.

Truly yours,
D/S

E. A. DRAKE,
Vice-President."

Q. That is the only correspondence you find between them on the subject?

A. Yes; that completes the correspondence I gave this morning.

5555 FRANK W. WHITE,

recalled as a witness on behalf of the complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. You have already testified and identified yourself as an employee of the Interstate Commerce Commission?

A. Yes, sir.

Q. I show you Complainant's Exhibits 183-A and 183-B. What are they?

A. Complainant's Exhibit 183-A is a statement showing class rates from Portland, Oregon, to San Francisco, California, from April 3, 1888, to date. Complainant's Exhibit 183-B is supplement to statement No. 1688, showing Emergency Rates between Portland, Oregon, and San Francisco, California, effective December 1, 1895.

Q. I notice a foot note there showing that was changed on the 15th day of December, 1895. What was the change?

A. The change was that the original tariff carried rates both ways, and the one that took effect December 15th made the rates apply northbound only.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibits 183-A and 183-B.

Complainant's Exhibits 183-A (White) and 183-B (White) are as follows:

5556 COMPLAINANT'S EXHIBIT 183–A. (White.)

(1689) INTERSTATE COMMERCE COMMISSION,
Bureau of Rates and Transportation, April 7, 1909.

Statement showing Class Rates from Portland, Oregon, to San Francisco, Calif., from April 3rd, 1888, to date.

Rates in cents per one hundred pounds.

Tariffs Southern Pacific Co.	Effective.	Portland, Oregon, to San Francisco, Calif.									
		1	2	3	4	5	A	B	C	D	E
File 1689	April 3, 1888	200	170	150	130	110	110	85	77	65	56
" 4422	August 7, 1890	130	112	91	75	65	57	48	43	37	32
Sup. 1 to ICC 178	August 1, 1895	40	40	40	35	30	30	25	25	20	20
Amendt. 3 to ICC 367	*October 20, 1896	56	52	49	46	43	41	35	30	25	22
ICC 1481	February 20, 1900	51	41	31	26	18	23	23	18	18	18
ICC 2105	January 10, 1904	51	41	36	31	25	25	25	25	25	25
ICC 2322 to ICC 3021	July 15, 1905, to date.	51	41	41	41	28	28	28	28	28	28
**ICC 899	December 5, 1897	50	40	30	25	17½	22½	22½	17½	17½	17½
Sup. 6 to ICC **899	January 23, 1898	51	41	31	26	18	23	23	18	18	18

* Carries no notation to the effect that it cancels ICC 367.
** ICC 899 was cancelled by ICC 1038, which carried same rates and which in turn was cancelled by ICC 1481, effective February 10, 1900.

5557 COMPLAINANT'S EXHIBIT 183–B. (White.)

INTERSTATE COMMERCE COMMISSION,
Bureau of Tariffs, June 8, 1909.

Supplement to statement No. 1688, showing "Emergency" Rates between Portland, Oregon and San Francisco, Calif., effective December 1, 1895.

Rates in cents per one hundred pounds.

Between	Portland, Ore.									
And	1	2	3	4	5	A	B	C	D	E
San Francisco, Cal.	12½	12½	12½	12½	10	10	10	10	10	10

Southern Pacific Co. "Interstate Special Rate No. 1258" (ICC File 8564) Tariff was cancelled December 15, 1895, by Southern Pacific Co. "Interstate Special Rate No. 1269" (ICC File 8578) which applied *Northbound Only.*

5558 Q. I show you Complainant's Exhibit 184. What is that?

A. It is copy of tariff showing rates between San Francisco and Portland, effective December 1, 1895.

Q. Is that the emergency tariff mentioned in Complainant's Exhibit 183–B?

A. It is, yes, sir.

Q. I show you Complainant's Exhibit 185. What is that?

A. That is the tariff that supersedes the one that was just put in evidence—tariff naming rates from San Francisco to Portland, effective December 15, 1895.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibits 184 and 185.

Complainant's Exhibits 184 (White) and 185 (White) are as follows:

5559 COMPLAINANT'S EXHIBIT 184. (White.)

SOUTHERN PACIFIC COMPANY
(Pacific System)

Rates for Transportation of Freight.
Interstate Special Rate No. 1258.
Between
San Francisco, Cal., only
and
Portland, Salem, Or., and points between
Effective December 1, 1895.

Rates will be as follows on merchandise except as noted below:

Governed by Western Classification.

In cents per 100 pounds.

Classes:	1	2	3	4	5	A	B	C	D	E
	12½	12½	12½	12½	10	10	10	10	10	10

Minimum charge for any single shipment 25 cents.

APPLICATION OF RATES.

First.—These rates do not apply to or from any point south of Salem.

Second.—These rates do not apply on Explosives, Fresh Fruits or Vegetables, Fresh Meats or Poultry, Oils (coal or other), Acids, Furniture, Vehicles, Agricultural Implements, or freight that cannot be conveniently loaded in ordinary box car.

Third.—These rates may be used in combination with local rates between Portland and points on this Company's west side lines in Oregon.

Fourth.—These rates may be used to or from Portland for freight originating or destined north or east of Portland, when, by adding same to local rates beyond Portland, a lower rate is obtained than provided by such joint tariffs as in effect between San Francisco and destination of the freight.

Fifth.—Tariff 10-0 (including Amendment 5 thereto), and special commodity rates as published remain in effect unless lower rates are otherwise herein specifically provided.

NOTE.—These rates are not regarded as fair compensation for the service, but are forced by the excessive competition of ocean lines.

RICHARD GRAY,
General Traffic Manager,
San Francisco, Cal.

E. P. ROGERS,
Asst. General Frt. Agent,
Portland, Or.

C. F. SMURR,
Gen'l Frt. Agent,
San Francisco, Cal.

San Francisco, November 25, 1895.

5560 COMPLAINANT'S EXHIBIT 185. (White.)

SOUTHERN PACIFIC COMPANY
(Pacific System)

Rates for Transportation of Freight.
Interstate Special Rate No. 1269.
(Supersedes Interstate Special Rate No. 1258.)
from
San Francisco, Cali., only.
to
Portland, Albany, Or., and points between.
Effective December 15, 1895.

Rates will be as follows on merchandise except as noted below:

Governed by Western Classification.

In cents per 100 pounds.

Classes:	1	2	3	4	5	A	B	C	D	E
	12½	12½	12½	12½	10	10	10	10	10	10

Minimum charge for any single shipment 25 cents.

APPLICATION OF RATES.

First.—These rates do not apply to any point south of Albany and do not apply south bound.

Second.—These rates do not apply on

Acids	Fruit, Fresh	Poultry, Live
Explosives	Meats, Fresh	Vegetables, Green

or freight that can not be conveniently loaded in box car.

Third.—These rates may be used in combination with local rates from Portland to points on this Company's West Side lines in Oregon.

Fourth.—These rates may be used to Portland for freight destined north or east of Portland, when, by adding same to local rates beyond Portland, a lower rate is obtained than provided by such joint tariffs as in effect from San Francisco to destination of the freight.

Fifth.—Tariff 10-0 (including Amendment 5 thereto) and special commodity rates as published remain in effect unless lower rates are otherwise herein specifically provided.

NOTE.—These rates are not regarded as fair compensation for the service, but are forced by the excessive competition of ocean lines.

RICHARD GRAY,
General Traffic Manager,
San Francisco, Cal.

E. P. ROGERS,
Asst-Gen'l. Frt. Agent.
Portland, Or.

C. F. SMURR,
General Freight Agent
San Francisco, Cal.

San Francisco, December 3, 1895.

5561 Q. I show you Complainant's Exhibit 186, consisting of three sheets. What is that?

A. It shows rates between San Francisco, Sacramento, Stockton, Marysville, Oakland 16th Street and San Jose and Utah common points, effective December 12, 1887.

Q. What are the other pages?

A. The other pages are instructions from the general office of the Southern Pacific Company to its agents in California.

Q. Attached to that tariff?

A. Attached to it, yes, sir.

Q. Is that a copy of the document that is on file?

A. It is a copy of the document on file with the Commission, yes, sir.

Q. You have the original here?

A. Yes, sir.

Q. Filed by the Southern Pacific Railroad Company?

A. Filed by the Southern Pacific Railroad Company.

Mr. SEVERANCE. I suppose it may be understood as to all of these tariffs and documents that copies may be used and offered with the same force and effect as the originals?

Mr. LOVETT. Yes. This stipulation may apply to each of the tariffs and documents now produced and introduced in evidence.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 186.

Complainant's Exhibit 186 (White) is as follows:

5562 COMPLAINANT'S EXHIBIT 186. (White.)

SOUTHERN PACIFIC COMPANY
(Pacific System)
General Freight Office.
Through Utah Freight Tariff.
To take effect December 12, 1887.
Subject to Western Classification.
Between
San Francisco, Sacramento, Stockton, Marysville, Oakland 16th St. and San Jose.
and
Utah Common Points, viz:

Ogden, Summit, Kaysville, Kays Creek, Hooper, Layton, Farmington, Centerville, Lake Shore, Woods Cross, Salt Lake City, Morgan, Francklyn, Germania, Lovandahl's Sandy, Bingham Junction, Draper, Jordan Narrows, Lehi, Lehi Junction, American Fork, Battle Creek, Pleasant Grove, Provo, Springville and Spanish Fork.

Rates are in Cents per 100 lbs.

Classes:	1	2	3	4	5	A	B	C	D	E
	200	170	150	130	110	110	85	77	65	56

Minimum charge for a single shipment, 100 lbs. of freight at second class rate.

Above rates will cover intermediate points when lower than rates shown in " N " series, or than rates otherwise provided.

This tariff to be used by Agents until they receive from this office regular printed tariff.

J. C. STUBBS,
Gen'l Trf. Mgr.

RICHARD GRAY,
General Freight Agent.

5563 1499

SOUTHERN PACIFIC COMPANY
(Pac. Sys.)
General Freight Office.

SAN FRANCISCO, *March 16th, 1888.*

To Agents in California:

Freight from local points on our line to points on the lines of the Oregon Ry. & Nav. Co., Oregon Short Line, Northern Pacific R. R., Utah & Northern Ry. or Montana Union Ry. should be sent as follows:

1.—*O. R. & N. and Oregon Short Line Points.* Freight for points on the line of the O. R. & N. Co. and Oregon Short Line west of Caldwell should not be forwarded by the all rail route, but shippers must be informed that the freight should go by the O. R. & N. Co's steamers from San Francisco.

2.—*Northern Pacific R. R. Points.* Freight for points on the Northern Pacific R. R. west of Pasco Junction should similarly go by steamer via San Francisco.

Freight consigned to points on the Northern Pacific R. R. main line or branches, east of (and including) Pasco Junction, should be sent by the Shasta route.

3.—*Oregon Short Line Points West of Caldwell.* If shippers insist on sending, by all rail, freight for points on the Oregon Short Line west of Caldwell it should be billed to Ogden at our proportion of Caldwell rates, and will then be subject to the local rates of the Oregon Short Line north of Ogden.

5564 4.—*Montana Common Points, Points on Utah & Northern Ry. and on Montana Union Ry.* Freight for these points should be consigned by shippers either via Ogden or by the Shasta route.

RICH'D GRAY.
G. F. A.

Q. I show you Compainant's Exhibit 187. What is that?

A. It is a special tariff on canned fruit and vegetables from Portland, Astoria and San Francisco to Salt Lake City, Montana common points and Union Pacific Eastern Terminals, effective June 29, 1888, filed with the Commission by the Oregon Railway & Navigation Company.

Mr. SEVERANCE. I offer Complainant's Exhibit 187 in evidence.

Complainant's Exhibit 187 (White) is as follows:

5565 COMPLAINANT'S EXHIBIT 187. (White.)

O. R. and N. No. 294. U. P. No. 820.

OREGON RAILWAY AND NAVIGATION COMPANY.
UNION PACIFIC RAILWAY CO.

Special Tariff
On
Canned Fruit and Vegetables
To
Salt Lake City, Montana Common points and Union Pacific Eastern Terminals.

Taking Effect June 29, 1888.

From—	Rate carloads 20,000 lbs. or over.
Portland, Astoria and San Francisco	1.10 per 100 pounds.

Rate named from San Francisco applies via Steamers and Portland.

Above rate must not be exceeded on similar shipments to intermediate points on direct line.

J. A. MUNROE,
G. F. A., U. P. Ry.
Omaha.

W. H. BALDWIN,
A. G. F. A., U. P. Ry.
Omaha.

B. CAMPBELL,
G. F. A., O. R. & N. Co.
Portland.

H. A. JOHNSON,
1st A. G. F. A., U. P.
Omaha.

5566 Q. I show you Complainant's Exhibit 188, including the second page. What is that?

A. It is a Transcontinental Association west-bound tariff, effective January 15, 1891, from common points east of the 97th Meridian of longitude on roads in this Association, and points east thereof on roads with which this Association has agreed basis of division, or from which arbitraries or local rates are allowed east of Association's eastern terminals, to San Francisco, Sacramento, Maryville, Stockton—shall I read them all?

Q. No; you need not read them all. It is a tariff, is it?

A. Yes.

Q. And is that the tariff that contains the notice of the abrogation of the Canadian Pacific differential?

A. It is; yes, sir.

Mr. SEVERANCE. I offer Complainant's Exhibit 188 in evidence.

Mr. LOVETT. Is this Exhibit 188 complete? I ask that question because it commences by saying: "Supersedes west-bound tariff No. 26, effective June 18, 1890, and all supplements thereto."

Mr. SEVERANCE. This tariff is dated 1891. It becomes effective in 1891, superseding all previous tariffs. It is certified to as a copy. There is the certificate.

Mr. LOVETT. It says it is only an extract.

Mr. SEVERANCE. Oh, does it say "extract?"

WITNESS. I think the tariff itself carries rates also. I think that is just the pertinent part of it.

Mr. LOVETT. I think you had better let the statement go 5567 in with the certificate to show that.

Q. Have you got the whole tariff here?

A. Not that one.

Mr. SEVERANCE. Exhibit 188 is a certified copy of what it purports to be, certified by the Secretary of the Interstate Commerce Commission.

Complainant's Exhibit 188 (White) is as follows:

COMPLAINANT'S EXHIBIT 188. (White)

Supersedes West-Bound Tariff No. 26, Effective June 18th, 1890, and all supplements thereto.

No. 30

TRANS-CONTINENTAL ASSOCIATION.

Atchison, Topeka & Santa Fe R. R.	Northern Pacific Railroad
Atlantic & Pacific Railroad.	Oregon & California Railroad
Burlington & Mo. River R. R. in Neb.	Rio Grande Western Railway
Canadian Pacific Railway	Southern California Railway
Chicago, Rock Island & Pacific R'y (West of Mo. River),	Southern Pacific Company, Atl. System
Colorado Midland R'y,	Southern Pacific Company, Pac. System
Denver & Rio Grande Railroad,	St. Louis & San Francisco Railway
Great Northern Railway Line.	Texas & Pacific Railway
Missouri Pacific Railway	Union Pacific Railway

In connection with Eastern Lines

WEST-BOUND TARIFF

Effective January 15th, 1891

Rates named herein will apply

From

Common Points East of the 97th Meridian of Longitude on roads in this Association, and points east thereof on roads with which

this Association has agreed basis of division, or from which arbitraries or local rates are allowed east of Association's Eastern Terminals.

To

5568 San Francisco, Sacramento, Marysville, Stockton, San Jose, Oakland (16th Street), Los Angeles and San Diego, California; Portland and Astoria, Oregon; Tacoma, Seattle and Port Townsend, Wash.; Victoria and New Westminster, British Columbia, and "Intermediate Points" as provided herein.

Exceptions: 1st. Rates provided herein apply to Tacoma, Seattle and Port Townsend, Wash.; Victoria, Vancouver and New Westminster, B. C., ONLY when routed via Canadian Pacific Railway, Northern Pacific Railroad or Union Pacific Railway and Steamer from Portland, Ore.

2d. Rates provided herein will not apply to points in California south of Lathrop, Stockton or San Jose, on shipments routed via Portland, Ore.

NOTICE

The differential rates that formerly applied on freight traffic from Eastern common points to San Francisco, Cal., via the Canadian Pacific Railway, as provided in previous issues of tariffs, were abrogated January 1, 1891, on which date the rates via the Canadian Pacific Railway were made the same as those applying by all other lines.

INTERSTATE COMMERCE COMMISSION

OFFICE OF THE SECRETARY

WASHINGTON

EDWARD A. MOSELEY,
Secretary.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the document hereto attached is an extract from No. 30, Trans-Continental Association West-Bound Tariff, effective January 15, 1891, on file with the said
5569 Interstate Commerce Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 11th. day of March, A. D. 1909.

(Seal)
{Interstate Commerce Commission 1887}

EDW. A. MOSELEY
Secretary of the Interstate Commerce Commission.

5570 Q. What is Complainant's Exhibit 189?

A. It is a statement showing the rates on wool, in grease, carloads, minimum weight 20,000 pounds, from points on Oregon Short Line Railroad to New York, N. Y., all rail, in comparison with rates from points on Southern Pacific system, via El Paso and Sunset-Gulf routes, except as noted.

Q. Was that statement made up by you from the records of the Interstate Commerce Commission, or under your direction?

A. It was.

Q. Is that a correct statement of what it purports to show?

A. It is, with the exception you spoke of, that there is a rail and water tariff that went into effect in March.

Q. With the exception of the rail and water tariff this is complete from September, 1897, to January 11, 1909?

A. Yes.

Mr. SEVERANCE. I offer Complainant's Exhibit 189 in evidence. Complainant's exhibit 189 (White) is as follows:

5571 COMPLAINANT'S EXHIBIT 189. (White.)

(1763) INTERSTATE COMMERCE COMMISSION,
Bureau of Tariffs, June 8, 1909.

Statement showing rates on Wool, in grease, carloads, minimum weight 20,000 lbs., from points on Oregon Short Line R. R., to New York, N. Y., all-rail, in comparison with rates from points on Southern Pacific System, via El Paso and Sunset-Gulf Routes, except as noted.

[Rates in Cents Per One Hundred Pounds.]

From / To New York, N. Y.	Oregon Short Line points.	Southern Pacific Co. points.
	Huntington, Ore., to Kuna, Idaho, inclusive, and Boise City, Idaho.	Kelton, Utah, to Wadsworth, Nevada, inclusive.†
September 25, 1897	200	200
April 20, 1903	217½	218½
May 11, 1903	211½	
May 20, 1903		207½
May 18, 1908	212	
January 11, 1909		207½*

† Effective June 27, 1899, application changed to read "Corinne, Utah, Marmol, Nevada, and points between."

* Applies all rail via Ogden, Utah. Rate of 207½ carried in Trans-Continental Freight Bureau ICC 318, expired January 1, 1909.

Oregon Short Line RR ICC Nos. 123, 154, 550, 569, 877, 896, 1342, 1441, 1511.
T. C. F. B. ICC Nos. 50, 97, 144, 195, 318. Southern Pacific Co. ICC 705, 3089.

5572 Q. I show you Complainant's Exhibit 190. What is that?

A. Statement showing rates on classes, and two commodities, between Portland, Oregon, and Ogden and Salt Lake City, Utah, via O. R. & N. Company and Oregon Short Line Railroad, in comparison with rates via Southern Pacific Company, west-bound.

Q. That is west-bound rates?

A. Yes, sir.

Q. I notice that you have made a mark, which is a circle with a line drawn across, under all the classes on the Southern Pacific side of this tariff, which refers to a foot note reading as follows: "March 20, 1899, to May 15, 1901, after which rates as shown in T. C. F. B. ICC. 142, or reissues will apply unless sum of locals is lower." What does that mean?

A. That means exactly what it says.

Q. I know; but what is the tariff that will apply?

A. Transcontinental Freight Bureau Tariff, or one naming higher rates from Portland to Utah common points than the rates that were carried by the Oregon Railroad & Navigation Company.

Q. Do those rates mentioned in that Transcontinental Tariff compare with the rates from Portland to Colorado common points—are they the same?

A. They are the same.

Q. As I understand, then, the effect of this foot note is that after that date, after May 15, 1901, the rates shown there no longer apply from Utah common points to Portland, but there was substi-

5573 tuted for them the Colorato rate, which was much higher.

A. By the Southern Pacific, yes, sir.

Q. I mean by the Southern Pacific. And the rates on the Short Line remained the same?

A. Yes, sir.

Mr. Severance. I offer Complainant's Exhibit 190 in evidence.

Complainant's Exhibit 190 (White) is as follows:

COMPLAINANT'S EXHIBIT 190. (White.)

71555—VOL 7—09——30

(1766)

INTERSTATE COMMERCE COMMISSION,
Bureau of Tariffs, June 8, 1909.

Statement showing rates on classes and two commodities between Portland, Oregon, and Ogden and Salt Lake City, Utah, via O. R. R. & N. Co. and Oregon Short Line R. R., in comparison with rates via Southern Pacific Company.

Rates in cents per one hundred pounds. Westbound.

Dates.	Via O. R. R. & N. Co.												Via Southern Pacific Company.											
	1	2	3	4	5	A	B	C	D	E	Potatoes C. L.	Onyx, rough C. L.	1	2	3	4	5	A	B	C	D	E	Potatoes C. L.	Onyx, rough, C. L.
March 20, 1899, to date.....	187½	161	131	109	94	82½	69	61½	54	46½	37½	37½[a]	187½ϕ	161ϕ	131ϕ	109ϕ	94ϕ	82½ϕ	69ϕ	61½ϕ	54ϕ	46½ϕ	37½ϕ	37½ϕ

ϕ March 20, 1899 to May 15, 1901, after which rates as shown in T. C. F. B., ICC. 142 or reissues will apply unless sum of locals is lower.
[a] Cancelled December 8, 1908.
O. R. R. & N. Co., ICC., 375, 545, 517, 996, 1362.
Southern Pacific Co., ICC., 1390.

5575 Q. How did you happen to select these two commodities of potatoes and rough onyx, in addition to the classes, in making up this statement?

A. Because the commodities in the tariffs at that time were not carried through for a sufficient length of time, with the exception of the two that are there. In fact it was easier for me to put them in than anything else, that is all.

Mr. LOVETT. Were there no rates on post-holes in that tariff?

WITNESS. None that I saw.

Q. I show you Complainant's Exhibit 191. What is that?

A. Statement showing rates on classes between Portland, Oregon, and Colorado common points.

Q. Does that apply both ways?

A. It applies both ways; yes, sir.

Q. Between what dates?

A. From July 20, 1898, until——

Q. To date?

A. No, sir; I should say January 1, 1909.

Mr. SEVERANCE. I offer Complainant's Exhibit 191 in evidence.

Complainant's Exhibit 191 (White) is as follows:

COMPLAINANT'S EXHIBIT 191. (White.)

5576
1768

INTERSTATE COMMERCE COMMISSION,
Bureau of Tariffs, June 8, 1909.

Statement showing rates on classes between Portland, Oregon, and Colorado common points via O. R. R. & N. Co., and Oregon Short Line R. R., in comparison with rates via Southern Pacific Co.

Rates in cents per one hundred pounds.

Dates.	Via O. R. R. & N. Co.										Via Southern Pacific Company.									
	1	2	3	4	5	A	B	C	D	E	1	2	3	4	5	A	B	C	D	E
EASTBOUND.																				
July 20, 1898	300	260	190	155	130	140	120	95	85	80	300*	260	190	150	130	140	120	95	85	80
WESTBOUND.																				
July 20, 1898	300	260	200	175	160	140	120	95	85	80	300	260	200	175	160	140	120	95	85	80

Southern Pacific Co. ICC., 1184.
T. C. F. B., ICC., Nos. 144, 195, 318, 868.
" " " 142, 193, 317, 375, 866.

5577 Q. You testified with reference to Exhibit 190, that the rates that were substituted in 1901 by the Southern Pacific from Utah common points to Portland were the rates named in the Interstate Commerce Commission Tariff 144, as I understood you. Is that what it says in the footnote?

A. 142, is it not?

Q. 142, yes; or re-issues. I wanted to know whether the rates named here between Colorado common points and Portland, via Southern Pacific, are the rates that you say became effective in 1901 from Utah common points in lieu of the rates previously carried?

A. They would be the rates, unless, as stated there, the sum of the combination was lower.

Q. That is, that would be the same, unless the sum of the locals was less?

A. Yes, sir.

Q. The locals between what points, for instance?

A. According to the Commission's rulings it would be the lowest combination over the route the shipment traveled; but I suppose what was meant was the local from Portland to San Francisco plus the rate from San Francisco.

Q. To Colorado common points?

A. Yes, sir. Or to Utah common points.

Q. I mean to Utah common points. No, to Colorado common points. Oh, that would be the sum of the locals, yes.

A. Yes.

Q. I show you Complainant's Exhibit 192. What is that?

5578 A. It is a comparative statement of the east-bound rates between Portland and Salt Lake City and Ogden, from March 20, 1899, to December 8, 1908.

Q. That is, over the two lines—the Southern Pacific on the one hand and the Oregon Railroad & Navigation and the Oregon Short Line on the other?

A. Yes, sir.

Q. I notice this same foot-note, or a similar one: "These rates remained in effect until May 15, 1901, when they were canceled by Supplement 63 to Southern Pacific Company, I. C. C. 1390, which states that thereafter Transcontinental Freight Bureau I. C. C. 144, or subsequent issues, will govern, unless combination of locals is lower." That seems to have taken out the rates, with the exception of the lumber rate, doesn't it?

A. Yes, sir.

Q. The lumber rate remained in?

A. The lumber rate remained in.

Q. It remained in at 40 cents as against 37½ cents by the other line, from December, 1907; that is correct, isn't it?

A. Yes; from December, 1907. But that 40-cent rate by the Southern Pacific has not been in effect since 1905, I think, or 1903.

Q. Well, that is what I wanted to know. I thought that was taken out, but you have nothing here to show it.

A. That is true.

Q. How is that?

A. That is true, I say.

Q. Well, what was the fact? Is that a mistake in the——

A. I will have to get that tariff and find out.

Q. Have you got it here?

A. Yes, sir.

5579 Well, get it and let us see.

(Witness refers to original tariff.)

Q. What do you find?

A. The rates were canceled effective May 15, 1901. "The rates between Portland, Oregon, and Utah points are hereby canceled, and their application from Portland, Oregon, proper, except from Portland, Jefferson Street, on the Yamhill Division of the Southern Pacific Company's lines in Oregon." That is carried in Amendment 2 to Southern Pacific I. C. C. No. 1683, which is tariff on lumber and articles shown therein, from stations on the Southern Pacific Company's lines and other points to Utah points. Now, September 26, 1901: "All rates on lumber and articles of lumber named in tariff and amendments, from points in Oregon to points on the line of the Union Pacific Railroad and Oregon Short Line in Utah are hereby withdrawn and canceled. Combination of locals governs." That is Amendment 4 to that same tariff.

Q. Then, Complainant's Exhibit 192, in so far as it refers to a lumber rate by the Southern Pacific of 40 cents, December 1, 1900, is defective, in that it does not state the time that was taken out?

A. That should have been in there.

Q. And your statement and the statement that you just made from the tariffs, has to be taken in connection with this Exhibit 192, has it?

A. It has.

Mr. SEVERANCE. I offer Complainant's Exhibit 192 in evidence.

Complainant's Exhibit 192 (White) is as follows:

COMPLAINANT'S EXHIBIT 192. (White.)

(1765)

INTERSTATE COMMERCE COMMISSION,
Bureau of Tariffs, June 8, 1909.

Statement showing rates on classes and two commodities between Portland, Oreg., and Ogden and Salt Lake City, Utah, via O. R. R. & N. Co., and Oregon Short Line R. R., in comparison with rates via Southern Pacific Company.

Rates in cents per one hundred pounds. Eastbound.

Dates.	Via O. R. R. & N. Co.												Via Southern Pacific Company.											
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.	Lumber C. L.	Packing house products C. L.	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.	Lumber C. L.	Packing house products. C. L.
March 20, 1899	172½	150	127½	107	88½	81	70	64	53	46½	37½	88½	172½†	150†	127½†	107†	88½†	81†	70†	64†	63†	46½†	37½	88½†
December 1, 1900											40												40	
January 29, 1907	154	131	115	96	79½	79½	62	56	38	31½														
October 29, 1907											37½													
December 8, 1908												79½												

† These rates remained in effect until May 15, 1901, when they were cancelled by supplement 63 to Southern Pacific Co., ICC. 1390, which states that thereafter Trans-Continental Freight Bureau ICC. 144 or subsequent issues will govern unless combination of locals is lower.

O. R. R. & N. Co., ICC. 198, 375, 491, 517, 532, 545, 617, 698, 996.
T. C. F. B., ICC. 564, 850, 862.
So. Pac. Co., ICC. 1390, 1683.
T. C. F. B., ICC. 144.

5581 Q. I show you Complainant's Exhibit 193. What is that?

A. Statement showing class rates from New York, N. Y., to Colorado common points via sea and rail, via Norfolk, Virginia, from May, 1899, to date.

Q. Were those rates via sea and rail via Norfolk, Virginia, applied to Colorado common points over the Union Pacific from the Missouri River?

A. Yes, sir. I say, "Yes, sir;" I understood that they were.

Q. Mr. White, you have checked up the rates shown on that table, Exhibit 193, with the rates by the Gulf routes to Colorado common points shown on Complainant's Exhibit 81–D, printed on page 872 of the record, have you?

A. Yes, sir.

Q. Are the rates the same?

A. I believe they are the same. They are the same.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 193.

Complainant's Exhibit 193 (White) is as follows:

COMPLAINANT'S EXHIBIT 193. (White.)

(1669.) C. A. SEVERANCE.

INTERSTATE COMMERCE COMMISSION,
Bureau of Tariffs, April 8, 1909.

Statement showing class rates from New York, N. Y., to Colorado common points via sea and rail via Norfolk, Va., from May, 1899, to date.

[Rates in cents per 100 pounds.]

From New York, N. Y., to Colorado common points.

Southern Ry. tariffs.	Effective.	1	2	3	4	5	A	B	C	D	E
ICC. 4125	May, 1899	233	190	147	117	93	108½	82½	75	66½	59
" 4171	June, 1899	233	185	147	117	93	106½	"	"	"	"
" 5265	July, 1899	205	165	132	109	84	97	81½	74	65½	58
" 4909	February, 1900	233	190	147	117	93	108½	82½	75	66½	59
" 5237	June, 1900	"	185	"	"	"	106½	"	"	"	"
" 5741	January, 1901	"	190	"	"	"	108½	"	"	"	"
" 6115	August, 1901	"	189	"	116	"	"	"	"	"	"
" 6431	January, 1902	"	190	"	"	"	"	"	"	"	"
" 6817	August 10, 1902	"	189	"	"	"	"	"	"	"	"
" 7177	February 2, 1903	"	190	"	"	"	"	"	"	"	"
" 7640	August 1, 1903	"	189	"	"	"	"	"	"	"	"
" 8008	February 9, 1904	"	190	"	"	"	"	"	"	"	"
" 8676	August 2, 1904	"	189	"	"	"	"	"	"	"	"
Sup. 12 to ICC. 8973	March 2, 1905	"	190	"	"	"	"	"	"	"	"
Sup. 10 to ICC. 9341	June 12, 1905	"	189	"	"	"	"	"	"	"	"
Sup. 1 to ICC. 9860	February 7, 1906	"	190	"	"	"	"	"	"	"	"
ICC. 10234	July 10, 1906	"	189	"	"	"	"	"	"	"	"
Sup. 6 to ICC. 10234	January 14, 1907	"	190	"	"	"	"	"	"	"	"
Sup. 15 to ICC. 10234	July 25, 1907	"	189	"	"	"	"	"	"	"	"
Sup. 18 to ICC. 10234	October 12, 1907	"	190	"	"	"	"	"	"	"	"
Sup. 32 to ICC. 10234	April 10, 1908 to date.	234	191	148	"	"	"	"	"	"	"

5583 Q. I show you Complainant's Exhibit 194. Is that a correct statement of what it purports to show?

A. Yes, sir.

Q. Those are the rates to Colorado points through Savannah?

A. Yes, sir, through Savannah.

Q. That is what is called the Central Georgia line to Colorado, isn't it, or don't you know what they call it out in that country?

A. We understand it as that, yes, sir.

Q. Those rates apply in connection with the Union Pacific from the Missouri River, do they not?

A. Yes, sir, I believe they do.

Mr. LOVETT. They apply in connection with the Union Pacific via the Missouri River; you mean when they move through the Atlantic ports?

Mr. SEVERANCE. Yes, through Savannah.

Mr. LOVETT. But you don't mean all rail?

Mr. SEVERANCE. No. This shows Savannah; sea and rail via Savannah, it says.

Q. This is the sea and rail tariff, from New York by sea to Savannah and thence all rail to Colorado, isn't it?

A. Yes, sir.

Q. And you understood my question to be, that when the traffic moved by that route it could move Union Pacific from the Missouri River to Colorado as part of the route?

Mr. LOVETT. All I was guarding against was the impression that those same rates applied all rail by the Missouri River in connection with the Union Pacific.

5584 Mr. SEVERANCE. Oh, no, those are already in, Judge; there was an exhibit put in before that showed the all-rail rate.

Mr. LOVETT. All right.

Mr. SEVERANCE. I offer Complainant's Exhibit 194 in evidence.

Complainant's Exhibit 194 (White) is as follows:

5585 COMPLAINANT'S EXHIBIT 194. (White.)

(1690) C. A. SEVERANCE.

INTERSTATE COMMERCE COMMISSION,
Bureau of Tariffs, April 8, 1909.

Statement showing Class Rates, from New York, N. Y., to Colorado Common Points, via Sea and Rail, via Savannah, Ga., from June 1, 1904, to date.

Rates in Cents Per One Hundred Pounds.

From New York, N. Y., to Colorado common points.

Tariff.	Effective.	1	2	3	4	5	A	B	C	D	E
[a] ICC. 1	June 1, 1904	233	190	147	116	93	108½	82½	75	66½	59
[b] Supp. 11 to ICC. 34-A & ICC. 37.	February 5, 1908, to date	234	191	148	"	"	"	"	"	"	"

[a] Ocean S. S. Co., of Savannah tariff.
[b] W. J. Sedgman's tariffs.

5586 Mr. SEVERANCE. It is stipulated that the sea-and-rail rates to Utah common points, through Norfolk, Newport News, Portsmouth, Virginia; Savannah and Brunswick, Georgia; and Charleston, South Carolina, are, and for at least fifteen years have been, the same as through the Gulf ports.

Q. What is Complainant's Exhibit 195?

A. It is a statement showing rates on ore and concentrates, carloads, from stations on the Phoenix & Eastern Railroad to Humboldt, Arizona, in effect February 3, 1906.

Mr. SEVERANCE. I offer Complainant's Exhibit 195 in evidence.

Complainant's Exhibit 195 (White) is as follows:

5587 COMPLAINANT'S EXHIBIT 195. (White.)

(1662) C. A. SEVERANCE.

INTERSTATE COMMERCE COMMISSION,
DIVISION OF RATES AND TRANSPORTATION,
March 8, 1909.

Statement showing rates on Ore and Concentrates, carloads, from stations on Phoenix & Eastern R. R., to Humboldt, Arizona, in effect February 3, 1906.

Rates in Cents per Ton of 2,000 Pounds.

To / From	Humboldt, Ariz.				
	Value not to exceed				
	$100.00 per ton.	$50.00 per ton.	$35.00 per ton.	$25.00 per ton.	$15.00 per ton.
Tempe, Ariz..	580	480	400	300	250
Florence, "					
Price, "					
Cochran, "					
Zellweger, "	600	500	400	300	250
Kelvin, "					
Burns, "					
Winkelman, "					

A. T. & S. F. Ry. ICC. No. 3739. Rates canceled June 13, 1907.

5588 Q. What is Complainant's Exhibit 196?

A. It is a statement showing rates on ore concentrates and copper matte, carloads, from stations on Phoenix & Eastern Railroad to Humboldt, Arizona, in effect June 1, 1907, and September 10, 1907, as noted.

Q. Did that supersede the tariff shown on Complainant's Exhibit 195?

A. I should say it did. The rates in this other statement were canceled on the 13th of June, leaving these rates in effect.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 196.

Complainant's Exhibit 196 (White) is as follows:

5589 COMPLAINANT'S EXHIBIT 196. (White.)

(1664.) C. A. SEVERANCE.

INTERSTATE COMMERCE COMMISSION,

DIVISION OF RATES AND TRANSPORTATION.

Statement showing rates on Ore Concentrates and Copper Matte, carloads, from stations on Phœnix & Eastern R. R. to Humboldt, Ariz., in effect June 1, 1907, and September 10, 1907, as noted.

[Rates in Cents Per Ton of 2,000 Pounds.]

From \ To	Humboldt, Ariz.			
	In effect June 1, 1907.	In effect September 10, 1907.		
	Ore and Concentrates, actual value not exceeding $100.00 per ton.	Ore Concentrates, actual value not exceeding $100.00 per ton and so released.	Ore Concentrates, released to valuation $100.00 per ton and actual value not exceeding $300.00 per ton.	Copper Matte released to valuation $100.00 per ton and actual value not exceeding $300.00 per ton.
Florence, Ariz...	a 970			
Price, " ...	a 1070			
Cochran, " ...	a 1090			
Zellweger, " ...	a 1130			
Kelvin, " ...	a 1130	750	785	
Burns, " ...	a 1270			
Winkelman, " ...	a 1270			585

a Combination of locals.

Phoenix & Eastern R. R. ICC. Nos. 1 and 13, A. T. & S. F. Ry. ICC No. 3739.

5590 Q. I show you Complainant's Exhibit 197. What is that?

A. It is a Southern Pacific Company's tariff, Southern Pacific Company's through rate. No. 740, showing rates on wool, in bales, from points on the R. G. W., Ogden, Utah, to Thistle, Utah, and points between; also Nebo, Utah, Salina, Utah, and points between, to New York, N. Y., Boston, Mass., and Philadelphia, Pa., effective June 15, 1894.

Q. That was filed with the Commission by what company?

A. This tariff was filed by the Southern Pacific Company with the Interstate Commerce Commission on June 14, 1894.

Q. What is Complainant's Exhibit 198?

A. It is a duplicate of the tariff just described, with the exception that it was filed by the Rio Grande Western Railway, June 18, 1894.

Q. These are the original tariffs, are they?

A. Those are the original tariffs from the files of the Commission.

Mr. SEVERANCE. I offer them (Complainant's Exhibits 197 and 198) in evidence, and it is stipulated that these exhibits may be copied by the reporter, the copies marked as exhibits, and offered in evidence with the same force and effect as the originals, so that the originals may be returned to the file of the Commission.

Complainant's Exhibits 197 and 198 are as follows:

5591 COMPLAINANT'S EXHIBIT 197. (White.)

Agent will at once place this in his File for public inspection. Attach to Tariff it affects.

SOUTHERN PACIFIC COMPANY.
(Pacific System.)

In connection with

RIO GRANDE WESTERN RAILWAY,
SOUTHERN PACIFIC COMPANY (ATLANTIC SYSTEM).

So. Pac. Co's Through Rate No. 740.

SAN FRANCISCO, *June 5, 1894.*

To Agents: The following rate takes effect June 15, 1894, to terminate with the issuance of a new tariff, unless otherwise noted.

From	To	On	Rate per ton.
Ogden, Utah..... Thistle, Utah, and points between..... Nebo, Utah..... Salina, Utah, and points between.....	New York, N. Y..... Boston, Mass..... Philadelphia, Pa.....	Wool, in bales (machine compressed), carloads.	$38.00
	Minimum weight 20,000 lbs.		

Applies from and to points named only.

Route: Rio Grande Western Ry. to Ogden, So. Pac. Co. (Pac Sys.) to El Paso, So. Pac. Co. (Atl. Sys.) beyond.

H. J. LYONS, General Freight Agent, Southern Pacific Co. (Atl. Sys.), New Orleans, La.

S. H. BABCOCK, General Freight Agent, Rio Grande Western Ry., Salt Lake City, Utah.

C. F. SMURR, General Freight Agent, Southern Pacific Co., San Francisco, Cal.

Stamped on face:

Freight Tariff Files
No. 7896
Auditor's Office

Cancelled by
File No. 8468

Auditors Office
157594
Jun 14 1894
Received
Interstate Commerce Commission

5592 COMPLAINANT'S EXHIBIT 198. (White.)

Agent will at once place this in his File for public inspection. Attach to Tariff it affects.

SOUTHERN PACIFIC COMPANY.
(Pacific System.)

In connection with

RIO GRANDE WESTERN RAILWAY,
SOUTHERN PACIFIC COMPANY (ATLANTIC SYSTEM).

So. Pac. Co.'s Through Rate No. 740.

SAN FRANCISCO, *June 5, 1894.*

To Agents: The following rate takes effect June 15, 1894, to terminate with the issuance of a new tariff, unless otherwise noted.

From—	To—	On—	Rate per ton.
Ogden, Utah..... Thistle, Utah, and points between. Nebo, Utah..... Salina, Utah, and points between.	New York, N. Y..... Boston, Mass..... Philadelphia, Pa.....	Wool, in bales (machine compressed), carloads.	$38.00
	Minimum weight 20,000 lbs.		

Applies from and to points named only.

Route: Rio Grande Western Ry. to Ogden, So. Pac. Co. (Pac. Sys.) to El Paso, So. Pac. Co. (Atl. Sys.) beyond.

H. J. LYONS, General Freight Agent, Southern Pacific Co. (Atl. Sys.), New Orleans, La.

S. H. BABCOCK, General Freight Agent, Rio Grande Western Ry., Salt Lake City, Utah.

C. F. SMURR, General Freight Agent, Southern Pacific Co. (Pac. Sys.), San Francisco, Cal.

Stamped on face: R. G. W. R'y., Tariff No. 929, S. H. Babcock, G. F. A.

Freight Tariff Files
No. 490
Auditor's Office

Auditors Office
Jun 18, 1894
Received
158019
Interstate Commerce
Commission

Can by letter
11-9-08
Sub 11-54

5593 Q. I show you Complainant's Exhibit 199, which is certified copies of certain tariffs on wool in bales, filed by the Rio Grande Western. These tariffs are for an easterly rail movement, are they not, from the points named there, connecting lines to the east? I mean as distinguished from these tariffs Complainant's Exhibits 197 and 198, which are the Southern Pacific tariffs?

A. Yes, sir.

Mr. SEVERANCE. I offer Complainant's Exhibit 199 in evidence. It is the same rate applying the other way, that is all.

Complainant's Exhibit 199 is as follows:

5594 COMPLAINANT'S EXHIBIT 199. (White.)

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
WASHINGTON.

EDWARD A. MOSELEY,
Secretary.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the schedules hereto attached are true copies of Tariff No. 910, dated May 19, 1894, on Wool in Bales, and

Supplements Nos. 1, 2 and 3 thereto, filed with the said Interstate Commerce Commission by the Rio Grande Western Railway.

In witness whereof I have hereunto set my hand and affixed the [SEAL.] Seal of said Commission this 8th day of June, A. D. 1909.

Interstate Commerce Commission 1887.

EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

5595 RIO GRANDE WESTERN RAILWAY

General Freight Department
and connecting lines.

TARIFF NO. 910.

SALT LAKE CITY, UTAH,
May 19, 1894.

From

Ogden, Salt Lake City, Spanish Fork, Goshen, Salina, Utah, to Utaline (Utah-Colo) and Intermediate Points.

To

Boston, Mass., New York City, N. Y., Philadelphia, Pa., and Baltimore, Md.

On

WOOL, IN BALES

(Machine Compressed)

Minimum Weight 20,000 lbs.
$1.90 per Hundred Pounds.
Effective May 28, 1894.

In no case will a greater charge be made to an intermediate point in Colorado, on same line, in same direction, on like property.

S. H. BABCOCK, General Freight Agent.
J. BRINKER, Ass't Gen'l Freight Agent.

5596 RIO GRANDE WESTERN RAILWAY

General Freight Department
and connecting lines.

AMENDMENT No. 1 TO TARIFF No. 910.

SALT LAKE CITY, UTAH,
June 1, 1894.

From

Corinne, Utah,

To

Boston, Mass., New York City, N. Y. Philadelphia, Pa. and Baltimore Md.

On

WOOL, IN BALES,

(Machine Compressed)

Minimum Weight 20,000 pounds
$1.90 per Hundred Pounds.
Effective June 8, 1894.

In no case will a greater charge be made to an intermediate point in Colorado, on same line, in same direction, on like property.

S. H. BABCOCK,
General Freight Agent.

J. BRINKER,
Ass't Gen'l Freight Agent.

5597 RIO GRANDE WESTERN RAILWAY

General Freight Department

and connecting lines.

AMENDMENT NO. 2 TO TARIFF NO. 910.

SALT LAKE CITY, UTAH,
April 10, 1895.

From

Corinne, Ogden, Salt Lake City, Spanish Fork, Goshen, Salina, Utah to Utaline (Utah-Colo) and Intermediate Points.

To

Boston, Mass., New York City, N. Y., Philadelphia, Pa. and Baltimore, Md.

On

WOOL, IN SACKS, OTHER THAN SCOURED

Minimum Weight 20,000 Pounds.

$1.90 Per Hundred Pounds

Effective April 17th, 1895.

In no case will a greater charge be made to an intermediate point in Colorado, on same line, in same direction, on like property.

W. E. HALM,
General Freight Agent

J. BRINKER,
Ass't General Freight Agent

5598 RIO GRANDE WESTERN RAILWAY.

General Freight Department

and connecting lines.

AMENDMENT NO. 3 TO TARIFF NO. 910.

SALT LAKE CITY, UTAH,
April 21, 1896.

CANCELLATION NOTICE.

Effective May 1st, 1896, the rates named in above numbered tariff and amendments thereto on Wool Carloads from Corinne, Ogden, Salt Lake City, Spanish Fork, Goshen, Salina, Utah, to Utaline (Utah-Colo.) and intermediate points, to Boston, Mass., New York

City, N. Y., Philadelphia, Pa., and Baltimore, Md., will be withdrawn and cancelled.

W. E. HALM,
General Freight Agent.

J. BRINKER,
Ass't General Freight Agent.

5599 An adjournment was here taken until the morning of Friday, June 11, 1909, at 10.30 o'clock.

5600 ROOM 515, CUSTOM-HOUSE, NEW YORK, N. Y.,
Friday, June 11, 1909—10.30 a. m.

The hearing was resumed before Hon. Sylvester G. Williams, Special Examiner, at the above time and place.

Present on behalf of the Complainant, Mr. C. A. Severance, Mr. G. E. Husted; on behalf of the Defendants, Mr. R. S. Lovett.

FRANK W. WHITE,

recalled, for further direct-examination.

By Mr. SEVERANCE:

Q. Mr. White, I call your attention to Complainant's Exhibit 81–E, appearing on page 873 of the printed record. This Complainant's Exhibit 81–E is stated to contain on its face footnotes to Complainant's Exhibit 81–D, which immediately precedes it on page 872. It seems to me that this foot-note must refer to Complainant's Exhibit 81–A, appearing on pages 866 and 867, and that the reference to Complainant's Exhibit 81–D is an error. Will you state what the facts are in that regard?

A. The Complainant's Exhibit 81–E, which shows these footnotes to Complainant's Exhibit 81–D, on page 873 of the record, should be appended to Complainant's Exhibit 81–A, pages 866 and 867 of the record.

Q. It should be foot-notes to Complainant's Exhibit 81–A, instead of Complainant's Exhibit 81–D, as stated in the record?

A. Yes, sir.

Q. The transcontinental rates, concerning which you prepared statements, and which various witnesses have stated are the
5601 same by all lines, include the following, do they not: Canadian Pacific, Great Northern, Northern Pacific, Union Pacific (including with it the Oregon Short Line and Oregon Railroad & Navigation Company) and also the Union Pacific line in connection with the Central Pacific to San Francisco, the Atchison, Topeka & Santa Fe, and the Southern Pacific Sunset.

A. Yes, sir, I believe so.

Q. Wherever the rates do not apply to certain specific points, these exceptions appear on the statements, do they not?

A. Yes, sir.

Cross-examination by Mr. LOVETT:

Q. You do not mean to testify that any transcontinental rates apply to or from California points by way of the Union Pacific, the Oregon Short Line, the O. R. & N., and Portland, do you, Mr. White?

A. I think at the time I made those statements that they did. I do not think the tariffs specified any ruling, and in that event they could apply over any lines that were parties to the tariff.

Q. Do you mean to swear there is on file with the Commission any tariff, transcontinental rates, over the Union Pacific, Oregon Short Line and O. R. & N., by way of Portland to California points?

A. I do not see how they could stop from using the tariff if they felt like it.

Q. That is not the question. I am asking you if there is with the Commission, or ever was, so far as you know, any tariff
5602 that way?

A. I could not answer that question, because, of course, I have not all the records of the Commission here.

Q. Well, come down to what you did make up: Did you find in any of those tables that you prepared, and the Exhibit 81–D, about which you were interrogated, any tariffs then showing transcontinental rates by way of Portland to California points?

A. I think I just stated that that tariff does not carry the ruling, and the railroads are a party to the tariff, and if they wanted to use it, I do not see why they couldn't.

Q. Was the Oregon Short Line and the O. R. & N. a party to the transcontinental rates to California?

A. If you please, Judge, I would like to get the tariff and I can answer you better. (Referring to tariffs.) This is the tariff that was in effect in 1904, until January 1, 1909. I have not the one since then. I have not the present one.

Mr. SEVERANCE. Just a moment. You say this was in effect from what time?

WITNESS. From January 1, 1904, until January 1, 1909.

Q. Describe it by number or in some manner.

A. This is Transcontinental Freight Bureau west-bound tariff No. 1–G, I. C. C. No. 375. Effective January 18, 1904. There is an exception on the front page of this tariff that says: "The rates provided herein will not apply to points in California by the Canadian Pacific Railway, Great Northern Railway, or Oregon Railroad & Navigation Company in connection with the Southern Pacific Company via Portland."

Q. So, then, these rates do not apply?

5603 A. Not by the Oregon Railroad & Navigation Company and the Southern Pacific, no.

Q. Well, that is what I say. Then, as to the Canadian Pacific, the Great Northern and Northern Pacific, the rates to California terminals are limited to San Francisco, aren't they?

A. No; because this tariff applies to Portland, East Portland, Albina, Astoria, etc.

Q. That is not in California?

A. No, sir.

Q. My question was California, wasn't it?

A. I believe it was. I guess I didn't understand it.

[Question read.]

A. I will read this exception, which I think will cover it. It is shown in connection with the Northern Pacific Railway, being shown as a party. "Rates provided herein will not apply in connection with the Southern Pacific Company, Pacific System, to points in Southern California south of Stockton, Lathrop, Tracy and San Jose on shipments routed via Portland or East Portland, Oregon.

Q. Is that the only exception there? Is that your answer to the question?

A. That is one exception.

Q. Well, how about others?

A. This is exception 2: "The rate provided herein from points east of Chicago, Illinois, or south or east of St. Louis, Missouri, will not apply to points in California by Northern Pacific railroad by Portland, Oregon, in connection with the Southern Pacific." Exception 4: "Rates provided herein will not apply to Portland"—I guess that does not interest you.

5604 Q. I want to know only about California. I want to ask whether in any of that tariff, or in any other tariff used by you in compiling these statements which have been introduced in evidence, it is not shown that the rates to California by way of the Canadian Pacific, the Great Northern and the Northern Pacific are limited to San Francisco?

A. No, I don't think it is shown in there; no, sir. But I think if you will look at the record, that reads: "Pacific Coast terminals," and does not say particularly California. As I remember the way they are made up, that is the way they are made—"To Pacific Coast terminals."

Q. I observe on page 873 of the printed testimony, at the foot of Exhibit 81–D, a statement, on page 3 of amendment 1 of I. C. C. No. 1, effective June 24, 1897, the following notice carried: "Except as hereinafter provided, the authorized rates to California points will apply (to San Francisco only) from territories" which are then specified.

A. Of course that was on the tariff. That is the reason it was put in there. But No. 1, you see, must have been away back in 1896.

Mr. SEVERANCE. 1897.

Q. 1897.

A. The amendment was in 1897—well, the tariff should have been, too.

Q. Complainant's Exhibit 81–E was prepared by you, wasn't it?

A. Yes, sir.

Q. On that exhibit purport to be foot notes to Complainant's Exhibit 81–D, although in fact it should be 81–A?

A. Yes, sir.

5605 Q. Complainant's Exhibit 81–A was prepared by you, wasn't it?

A. Yes, sir.

Q. And purports to be a statement showing class and commodity rates in effect June 24, 1897, to date, from and to various points named below—and then below is a statement of rates to Pacific Coast terminals from New York and various eastern points. What I read just now is the foot-note to that tariff.

A. Of course there were tariffs subsequent to that, and I could not state positively, but I think those foot-notes were changed; the first tariff I think had perhaps only two exceptions, and when it got to this tariff, you see, there were four or five.

Q. 81–A purports to bring the situation down to date from June 24, 1897, and the foot-note is a foot-note to that statement. Now, is that foot-note correct?

A. The statement that I made carried the I. C. C. numbers of all the tariffs, and if that note is carried all through the tariffs it is correct; and if it is not, it is not. That is, it is correct in so far as it goes. It says it is from that supplement to that tariff, and it is.

Q. What did you put it in for? What was the purpose in putting it in? Did you intend it to be correct? By quoting a tariff in effect June 24, 1897, as a foot-note to a statement purporting to show the rates from 1897 to date, did you mean to indicate that that still was not in effect, or to show that it was still in effect?

5606 A. It is still in effect—I think it has been carried all through the tariffs. If it had not been I should have changed it.

Q. That is what you would infer from the fact you put it in these foot-notes?

A. Yes, sir.

Q. There were introduced yesterday in connection with your testimony, Mr. White, various statements marked Complainant's Exhibits 183–A, 183–B, 189, 190, 191, 192, 193, 194, 195 and 196, which I understood you to testify were prepared in the office of the Interstate Commerce Commission by you or under your direction. As I understand them, they do not purport to be copies of anything, but set forth certain data that you collected in the Office of the Commission. Will you state what basis you had for the preparation of those statements, and what governed you in selecting the data you included in them?

A. Yes, sir. The Commission was requested by Mr. Severance to furnish information—there were several different letters, and Mr. Husted also came over and said that he wanted the rates between so-and-so, and he got them, and the authority for the rates will be found on the bottom of each statement, the I. C. C. numbers of the tariffs used.

Q. Did such instructions embrace precisely the rates that were wanted, or did he request certain results, or what was the nature of it? How was it specified?

A. I think it was asked to have the rates from and to the points named, between certain dates, as I remember. I think the last letter (I don't know whether Mr. Husted has it or not) asks for the rates from 1897 to 1901, I believe it is—two or three years previous
5607 and two or three years subsequent; and from Portland to Utah common points and also Colorado common points, and I think he asked for the statement as far back as I could get it on that Portland and San Francisco—if that is what you mean. I don't know that I can answer you any better.

Q. With reference to Exhibit 183, which is a statement purporting to show class rates from Portland, Oregon, to San Francisco from April 3, 1888, to date—that embraces only class rates?

A. Only class rates.

Q. There are also commodity rates between those points, aren't there?

A. Many of them; yes, sir.

Q. And wouldn't you understand that probably most of the traffic moves on commodity rates?

A. Well, of course, I don't know anything about what moves out there, because I never was there.

Q. Well, you have some general knowledge of the way traffic moves. Of course, you can testify only, I suppose, absolutely and accurately from the records in your office; but I am speaking of your general knowledge of the movement of traffic.

A. Why, as a general rule, of course, there is more tonnage moves under commodities than under class rates anywhere. There would be no exception there.

Q. I notice also that the statement shows rates only from Portland to San Francisco. What about the rates from San Francisco to Portland? Are they the same, or do you know about that?

A. I couldn't state positively about that. I think the tariff reads "between," though.

Q. It shows only one way, though—Exhibit 183?

5608 A. I could not state positively.

Mr. SEVERANCE. Doesn't that apply both ways? [Handing witness exhibit.]

WITNESS. Yes; I made the statement, but I say I can't state positively. I don't know. As far as I remember now, the rates apply both ways. There isn't any difference. The tariff reads "between." We differentiate, of course. The tariff reads "From and to" or "Between."

Mr. SEVERANCE. How does your statement read?

WITNESS. The statement reads "From Portland, Oregon, to San Francisco."

Q. It doesn't say "Between."

A. It doesn't say "Between," no, sir.

Q. With reference to Exhibit 183–B: that shows emergency rates between Portland and San Francisco, effective December 1, 1895. The foot note says that the tariff was canceled December 15, 1895, by the

Southern Pacific Company, Interstate Special rate, No. 1269, which applied north-bound only. It seems from that, that the tariff shown in Exhibit 183–B was in effect only 15 days, doesn't it?

A. That first tariff was in effect only 15 days, yes, sir.

Q. How long was the one that superseded it in effect, do you know?

A. I don't know.

Q. You don't know whether that stayed in effect more than 15 days or not?

A. I have it here and I know that the Commission has no record of its ever being canceled.

Q. Has no record of its ever being canceled?

A. No, sir.

5609 Q. It may be in effect yet, so far as you know?

A. It may be in effect yet as far as I know, yes, sir.

Q. Complainant's Exhibit 189 is a statement purporting to show rates on wool, in grease, carloads, &c., from certain points on the Oregon Short Line to New York, all-rail, in comparison with rates from points on Southern Pacific via El Paso and Sunset-Gulf routes. I notice that the points on the Oregon Short Line selected are Huntington, Oregon, to Kuna, Idaho, inclusive, and Boise City, Idaho, and points on the Southern Pacific are Kelton, Utah, to Wadsworth, Nevada, inclusive. How did you happen to select those points?

A. Because those were the points that the tariffs carried.

Q. Any others?

A. I don't think they do. I think the tariff reads exactly as the heading shows there. It is my recollection it does.

Q. Only as to those points?

A. Only as to those points, yes, sir. That last tariff there may carry a few additional, because, as the country grows up, I suppose there are more points added.

Q. Put in new points?

A. They may have, yes.

Q. Complainant's Exhibit 190 is a statement purporting to show rates on classes and two commodities, between Portland and Ogden and Salt Lake City, via O. R. & N., and the Oregon Short Line, in comparison with rates by the Southern Pacific Company. Now, you included in that, apparently, all the class rates, but only two commodities—potatoes and onyx (rough). Weren't there tariffs on other commodities between those points?

A. Yes, sir.

5610 Q. Why didn't you include them?

A. It is my recollection that those two commodities run right through from one tariff to another, whereas most other commodities were changed, and it would have required my going and getting another set of tariffs to find out—to get them. Those two commodities were carried for that length of time conti .uously from one tariff to another. That is the only reason I took them.

Q. Your recollection is that you selected them for that reason?

A. Yes, sir.

Q. There are a great many commodities that move in very much larger quantity than rough onyx, aren't there?

A. Yes, sir; I expect there are.

Q. Complainant's Exhibit 191 is a statement purporting to show rates on classes between Portland and Colorado common points, via the O. R. & N., and Oregon Short Line, in comparison with rates via the Southern Pacific. Under the head of "Date," July 20, 1898, is given. It does not show how long these rates were in prior to July 20, 1898, nor how long they were in after that date. How did you happen to select that particular date?

A. If you will just refer me to that I. C. C. number maybe I can tell you.

Q. What?

A. If you will let me see it maybe I can tell you.

[Paper handed witness.]

A. I took that because, I think, Mr. Severance asked me to make a statement for two or three years previous to 1901 and two or
5611 three years afterwards. I have the tariff with me now that this tariff cancels. I can give you the rates before this, if you want them, or after it, either.

Q. I am not asking you for them. I am asking you why you did it that way.

A. I just did it simply to get something a couple of years before 1901, as I remember it.

Q. And you selected that particular date?

A. Yes, sir; because that is a tariff that covered all the dates two or three years before.

Q. Is that the date of the tariff—July 20, 1898?

A. Yes, sir.

Q. Did both lines put in a tariff on July 20, 1898?

A. It is a Southern Pacific issue; the O. R. & N. and Oregon Short Line are parties to it.

Q. Oh, they are parties to it?

A. Yes, sir.

Q. That is to say, on July 20, 1898, the Southern Pacific, the Oregon Short Line, and the O. R. & N. filed a joint tariff covering rates between Portland, Oregon, and Colorado common points?

A. Yes, sir.

Q. Have you got that tariff?

A. Yes, sir. Would you like it?

Q. Yes; I would like to look at it.

[Witness hands a bunch of tariffs to Mr. Lovett.]

Q. The tariffs that you hand me are a pretty big book. They include the rates shown in complainant's Exhibit 191, with a great many others, don't they?

A. Yes, sir.

Q. You selected from that tariff, covering a vast number of points, the particular points designated in the heading of
5612 Complainant's Exhibit 191?

A. I don't think I understand your question.

Q. I say from this tariff, which covers large territory and many points, you selected the rates on classes between Portland, Oregon, and Colorado common points.

A. I did not select them. Mr. Severance asked for the rates from Portland to Colorado common points.

Q. And you got them from this tariff?

A. I got them from that tariff; yes, sir.

Q. And the tariff included a large number of other points?

A. Yes, it included a number of others. I don't know how much you mean by "large."

Q. Well, we will leave the Court to guess at that. Complainant's Exhibit 192 appears to be a statement showing rates on classes and two commodities between Portland and Ogden and Salt Lake City, via the O. R. & N., and the Oregon Short Line, in comparison with rates via the Southern Pacific. It seems to embrace all the class rates, and the two commodities selected here are lumber and packing house products. How did you happen to select those two instead of onyx and potatoes?

A. Well, that is the west-bound statement, is it not?

Q. No; this is the east-bound.

A. Because there wasn't any rate on onyx east-bound.

Q. There was a rate on potatoes, wasn't there?

(No response.)

Q. Did Mr. Severance ask for lumber in this statement?

A. He did, yes, sir.

5613 Q. How about packing house products?

A. But I will state now that I made the statement including lumber, I believe—yes, lumber is in there. The packing house products I simply took as being—I supposed that they shipped them, that is all. There was no reason for taking packing house products or anything else; just simply took them because——

Q. It was one of a vast number of commodities?

A. One of a number of commodities. I might have taken anything else.

Q. You don't know whether any packing house products ever moved that way or not?

A. No, sir, I don't know anything about it. The assumption is that they did, on account of there being rates.

Q. What?

A. I say the assumption is they did, on account of there being rates—special rates.

Q. With reference to Complainant's Exhibit 195, which is a statement showing rates on ore and concentrates, carloads, from stations on Phoenix & Eastern Railroad to Humboldt, Arizona, effective February 3, 1906: how did you make that up—by taking combination of locals?

A. There is one there, I believe, that has got a foot note to it, that says that they are combination of locals.

Q. The one I just mentioned; that is, Exhibit 195, has a foot note "A. T. & S. F. Ry. I. C. C. No. 3739. Rates canceled June 13, 1907." That was taken from a Santa Fe tariff, wasn't it?

A. Yes, sir.

5614 Q. Now, Exhibit 196, being a statement showing rates on ore concentrates and copper matte, carloads, from stations on Phoenix & Eastern Railroad to Humboldt, Arizona, in effect June 1, 1907, and September 10, 1907, as noted. There is a footnote to that showing combination of locals?

A. Yes, sir.

Q. You made that up from the local tariffs?

A. The local tariff of the Santa Fe and the local tariff of the Phoenix & Eastern.

Q. You gather from those tariffs, do you not, that the Phoenix & Eastern canceled its joint tariff with the A. T. & S. F., referred to in Exhibit 195?

A. The A. T. & S. F. canceled the tariff.

Q. The A. T. & S. F. canceled it?

A. Yes. As I remember it, the A. T. & S. F. canceled it.

Q. Do you know whether, about the time that tariff was canceled, a through tariff was made by the Phoenix & Eastern on the same articles, with the Southern Pacific, reaching smelters on the Southern Pacific line?

A. No, sir; I don't know that.

Q. You didn't look for that?

A. I didn't look for that.

Q. And you didn't look to see whether or not at the time this Santa Fe tariff, which is referred to in Exhibit 195, was in effect, that the Phoenix & Eastern rates in connection with the Southern Pacific were a combination of locals?

A. No, sir; I didn't look at that at all.

Q. Or to see whether there was a mere shifting of the matter from through rates with the Santa Fe to through rates with the Southern Pacific?

A. No, sir; I did not look that up at all.

5615 Q. With reference to Complainant's Exhibit 188, the certificate of the secretary of the Commission, appended to it, shows it is an extract from No. 30, Transcontinental Association, west-bound tariff. You understand that that tariff covers many other matters than those shown in this exhibit, don't you?

A. Yes, sir; I think it is just like the rest of those transcontinental tariffs. It covers rates. That is only an extract, anyway.

Redirect examination by Mr. SEVERANCE:

Q. Judge Lovett asked you a few minutes ago about the O. R. & N. and the Oregon Short Line being parties to a tariff, or you stated in answer to his question that they were parties to this tariff to Colorado common points. All the western lines are parties to that tariff, aren't they?

A. I didn't check them up, but there are a number of them there.

Q. Well, the Southern Pacific, Denver & Rio Grande, Rio Grande Western——

Mr. LOVETT. On reading the tariff I will admit that they are.

Q. So that it was not a tariff prepared simply by the Oregon Short Line and the O. R. & N. and the Southern Pacific, but all the western lines were in it?

A. Yes, sir.

Q. You spoke of there being nothing on file with the Commission to show that that emergency tariff had ever been canceled. Later tariffs were filed, as shown on these exhibits, covering the same commodities, naming different rates, weren't there?

A. Yes, sir; the statement shows that.

Q. The statement that I introduced in connection with your
5616 testimony yesterday. And also many rates are shown on Exhibits 81–J and 81–K?

A. Yes, sir.

Q. Exhibits 81–J and 81–K are later than that?

A. Yes, sir; they are all later than that.

(A recess was here taken until 2 o'clock p. m.)

By Mr. SEVERANCE:

Q. You testified, Mr. White, with reference to Complainant's Exhibit 192, being the rates from Portland, Oregon, to Salt Lake City and Utah common points by the two routes, that is, the Oregon Short Line and the O. R. & N., on the one hand, and the Southern Pacific Company on the other, that the class rates shown here remained in effect until May 15, 1901, when they were canceled, and thereafter the combination of locals determined the rate.

A. Yes, sir.

Q. Was that so as to the commodity tariffs into Utah common points from Portland?

A. It was so with the commodities that were carried in that tariff, which includes practically all the commodities there were.

Q. You said you wanted to make a correction to your statement in answer to a question I put to you just before the adjournment?

A. Yes, sir.

Q. What was that?

A. I testified that the Southern Pacific I. C. C. 1184 applied by all western lines.

Q. Between what points?

A. Between Colorado common points and Portland. I would like to amend that by saying that neither the Great Northern nor the Northern Pacific are parties to it. Therefore, it does not apply over those routes.

5617 Q. But it applies over the other lines?

A. It applies over the other lines; yes, sir.

Q. That is, over the Rio Grande in connection with the Southern Pacific and over the Union Pacific in connection with the Oregon Short Line and O. R. & N.?

A. Yes, sir.

Q. What is this Transcontinental tariff you are testifying about?

A. Transcontinental Freight Bureau I. C. C. 375.

Q. That was the tariff that you produced during your cross-examination by Judge Lovett?

A. Yes, sir.

Q. I will ask you to read into the record the statement on this tariff under the head of "Application of rates to San Francisco via California, via Canadian Pacific Railway, Great Northern Railway, Northern Pacific Railway, and Oregon Railroad & Navigation Company in connection with steamer lines."

A. On page 2 of Transcontinental Freight Bureau, I. C. C. 375, I find the following: "Application of rates via Northern Pacific Railway, via Portland, Oregon, and Southern Pacific Company (Shasta route). The class and commodity rates named herein, from Chicago and common points north of the Terre Haute & Indianapolis Railroad, Mississippi River and Missouri River common points, north of the Missouri River, including St. Louis and Kansas City, will apply via the Northern Pacific Railway via Portland in connection with Southern Pacific Company (Shasta route) to points on Southern Pacific Company's lines north of and including Lathrop, Stockton, San Jose, and Tracy, California."

Q. Now, read this one. [Indicating.]

5618 A. "Application of rates to San Francisco, California, via Canadian Pacific Railway, Great Northern Railway, Northern Pacific Railway and Oregon Railroad & Navigation Company in connection with steamer lines. Except as hereinafter provided, the authorized rates to California points, as carried on pages 42 to 105, inclusive, will apply (to San Francisco only) from territories Nos. 1 to 6, inclusive, defined on pages 3 to 11, inclusive, via the Minneapolis, St. Paul & Sault Ste. Marie Railway and Canadian Pacific Railway to Vancouver, B. C., care of Pacific Coast Steamship Company; via the Great Northern Railway, Seattle, Washington, care of Pacific Coast Steamship Company; via Great Northern Railway, Spokane, Washington, Oregon Railroad & Navigation Company, by Portland, Oregon, and steamer; by the Northern Pacific Railway, Tacoma, Washington, care of Pacific Coast Steamship Company; by Northern Pacific Railway, Wallula Junction, Washington, Oregon Railroad & Navigation Company, Portland, Oregon, and steamer." Shall I read the exceptions?

Q. Yes.

A. Exception No. 1: "Rates as above provided will not apply by the Great Northern Railway or Northern Pacific Railway from points in the Missouri River or Mississippi River territories south of the line of the Chicago & Alton Railway, Kansas City to Clark, Missouri, and Wabash Railroad, Clark, Missouri, to St. Louis, Mis-

souri." Exception No. 2: "Rates as authorized herein will not apply on locomotives, cars, extra heavy machinery or other unwieldy or bulky articles, freight in bulk, explosives, combustible freight, or any freight which the law prohibits passenger steamers carrying."

5619 Q. Now, what are the territories embraced in Nos. 1 to 6?

Mr. LOVETT. What is the number of the tariff he has been reading from?

Mr. SEVERANCE. What is the number of that tariff you are reading from?

WITNESS. That is Transcontinental Freight Bureau No. 375, 1-G.

Q. What are those territories that are included in Nos. 1 to 6, mentioned in that statement?

A. Territory No. 1, Missouri River common points territory. Territory No. 2, Mississippi River common points territory. Territory No. 3, Chicago and common points territory. Territory No. 4, Cincinnati, Detroit and common points territory. Territory No. 5, Pittsburg, Buffalo and common points territory. Territory No. 6, New York, Boston and common points territory.

Q. What are the rates mentioned on pages 42 to 105? Is that the whole schedule of rates—California terminals?

A. They are what are called the terminal rates. It does not include the intermediate rates.

Q. I mean the rates to California terminal points.

A. Yes, sir.

Q. All the rates, pages 42 to 105, are the ones mentioned in that note?

A. Not all the rates; no, sir.

Q. What are the exceptions—in general, say?

A. There are some rates on pages 106 and 107 that apply from additional points, designated in groups A, B, C, and D. On pages 110 and 111 are rates from New York, Morgan Line pier and the Mallory Line pier via—that would be the Gulf routes.

5620 Q. Of course, that would be the Gulf routes.

A. Yes.

Q. But the all-rail rates to California terminals, or all-rail together with steamer from Puget Sound or Portland, are shown on those pages 42 to 105, aren't they?

A. Yes, sir; practically all the rates there are, are shown there. There are some special commodity rates in back here that would apply.

Q. Well, that is substantially all the class and commodity rates?

A. Substantially all the class and commodity rates.

Q. What is the date of that tariff?

A. That tariff was effective January 18, 1904.

Q. That remained in effect up to January 1, 1909, didn't it?

A. Yes, sir.

Q. Do you know whether there was any change in the application of rates or the routing of traffic made by the tariff of 1909?

A. I think there was. I think the tariff was divided at that time and that the superseding issues to the California tariff did not include Portland, as this does, and Portland is carried in what is called the North Pacific coast terminal tariff.

Q. Do you know whether there is any difference as to the routing that was permitted—that is, by way of Puget Sound or Portland, and thence by boat to San Francisco?

A. I could not tell you without taking considerable time, because the routes are specified here individually. There is no general routing like there is in the other tariff.

Q. But that other routing applied up to the first of January
5621 of this year at least?

A. Yes, sir. I don't see anything in there that changes it.

Recross examination by Mr. LOVETT:

Q. Mr. White, in some of the provisions which you read just now from that Transcontinental Freight Bureau Tariff 375 occurred the phrase "To San Francisco only." What do you understand that to mean in that tariff?

A. I understand that to mean that when traffic is routed in accordance with that note, that means on traffic to San Francisco only; no other point.

Q. You understand that to limit that tariff, so far as transcontinental business by way of Puget Sound or Portland to California points, is concerned, to San Francisco only?

A. To San Francisco only, yes.

Mr. SEVERANCE. Well, there is another route, you know—the Northern Pacific through Portland and the Shasta route.

Mr. LOVETT. Well, I mean the water, Mr. Severance.

Mr. SEVERANCE. You did not say that in your question.

Q. I meant transcontinental business through Puget Sound ports or Portland, and thence by water. I did not mean to include in that question transcontinental business handled by the Northern Pacific in connection with the Shasta route and the Southern Pacific.

A. Yes, sir; I understand it that way. That is the provision of the tariff.

Q. You understand that to mean that as to all transconti-
5622 nental business to or from California points, passing through Puget Sound ports, or through Portland, and thence by water, it is limited to San Francisco?

A. I understand it that way; yes, sir.

By Mr. SEVERANCE:

Q. The rates in that tariff to San Francisco were the same as the rates via the Sunset-Gulf route to San Francisco from New York common points?

A. The class rates are; but there are some special commodities in here.

Q. Outside of the special commodities, that are different, shown in the original statements which you put in some time ago, they are the same?

A. Yes, sir.

Q. And those were from New York pier only—those special commodities?

A. Yes, sir; from New York pier and the Morgan line.

5623 Paper marked Complainant's Exhibit 200.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 200. It sets forth the ownership of stock in the Union Pacific, Southern Pacific, Atchison, Topeka & Santa Fe Railway Companies, by the individual defendants and the firm of Kuhn, Loeb & Company, of which defendants Schiff and Kuhn are members, at the various dates stated in the exhibit.

Complainant's Exhibit 200 is as follows:

5624 CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF UTAH.

United States of America, Complainants, *vs.* Union Pacific Railroad Company et al., Defendants.	No. 993. In equity.

It is hereby stipulated by the Complainant and Defendants as facts for the purposes of this suit as follows:

1. That the transfer books of the Union Pacific Railroad Company closed for the purposes of the annual meeting of the stockholders of that Company for the election of directors on the 4th day of September, 1900, and that at the close of business on said date the separate holdings of the stock of said Union Pacific Railroad Company, owned by the defendants Harriman, Frick, Kuhn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	17,838
Joint	None.

2. That the transfer books of the Union Pacific Railroad Company closed for the purposes of the annual meeting of the stockholders of that company for the election of Directors on the 3rd day of
5625 September, 1901, and that at the close of business on said date the separate holdings of the stock of said Union Pacific Railroad Company, owned by the Defendants, Harriman, Frick, Kuhn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	80,809
Joint	None.

3. That the transfer books of the Union Pacific Railroad Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 2nd day of September, 1902, and that at the close of business on said date the separate holdings of the stock of said Union Pacific Railroad Company, owned by the defendants Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly aggregated the following:

Separate	178,958
Joint	None.

4. That the transfer books of the Union Pacific Railroad Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 29th day of August, 1903, and that at the close of business on said date the separate holdings of the stock of said Union Pacific Railroad Company, owned by the defendants Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly (including all that held under the Syndi-
5626 cate agreement, dated November 11, 1902, of which a true copy (without signatures) is hereto attached), aggregated the following:

Separate	61,829
Joint	210,000
Preferred shares owned by others than parties to the suit, but controlled by Syndicate Managers	88,875

5. That the transfer books of the Union Pacific Railroad Company closed for the purposes of the annual meeting of the stockholders of that Company for the election of Directors on the 31st day of August, 1904, and that at the close of business on said date the separate holdings of the stock of said Union Pacific Railroad Company, owned by the defendants Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly (including all that held under the Syndicate Agreement, dated November 11, 1902, of which a true copy (without signatures) is here attached), aggregated the following:

Separate	25,509
Joint	319,000
Preferred shares owned by others than parties to the suit, but controlled by the Syndicate Managers	29,775

6. That the transfer books of the Union Pacific Railroad
5627 Company closed for the purposes of the annual meeting of the stockholders of that Company for the election of Directors on the 29th day of August, 1905, and that at the close of business on said date the separate holdings of the stock of said Union Pacific Railroad

Company, owned by the defendants Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly (including all that held under the Syndicate Agreement dated November 11, 1902, of which a true copy (without signatures) is hereto attached), aggregated the following:

Separate	172,030
Joint	287,000
Preferred shares owned by others than parties to the suit but controlled by Syndicate Managers	124,150

7. That the transfer books of the Union Pacific Railroad Company closed for the purposes of the annual meeting of the stockholders of that company for the election of Directors on the 15th day of September, 1906, and that at the close of business on said date the separate holdings of the stock of said Union Pacific Railroad Company, owned by the defendants Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly (including all that held under the Syndicate Agreement, dated November 11, 1902, of which a true copy (without signatures) is hereto attached), aggregated the following:

5628	Separate	276,776
	Joint	297,000
	Preferred shares owned by others than parties to the suit but controlled by Syndicate Managers	116,150

8. That the transfer books of the Union Pacific Railroad Company closed for the purposes of the annual meeting of the stockholders of that Company for the election of Directors on the 14th day of September, 1907, and that at the close of business on said date the separate holdings of the stock of said Union Pacific Railroad Company, owned by the defendants, Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all the stock held by any two or more of them jointly (including all that held under the Syndicate Agreement, dated November 11, 1902, of which a true copy (without signatures) is hereto attached), aggregated the following:

Separate	251,796
Joint	297,000
Preferred shares owned by others than parties to the suit but controlled by Syndicate Managers	120,150

9. That the transfer books of the Southern Pacific Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 15th day of March,

1900, and that at the close of business on said date the separate holdings of the stock of said Southern Pacific Company, owned by
5629 the defendants Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	15,000
Joint	None.

10. That the transfer books of the Southern Pacific Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 16th day of March, 1901, and that at the close of business on said date the separate holdings of the stock of said Southern Pacific Company, owned by the defendants Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	300
Joint	None.

11. That the transfer books of the Southern Pacific Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 22nd day of March, 1902, and that at the close of business on said date the separate holdings of the stock of said Southern Pacific Company, owned by the defendants, Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Company, and all stock held by any two or more of them jointly, aggregated the following:

Separate	4,000
Joint	None.

5630 12. That the transfer books of the Southern Pacific Company closed for the purposes of the annual meeting of the stockholders of that company for the election of Directors on the 3rd day of April, 1903, and that at the close of business on said date the separate holdings of the stock of said Southern Pacific Company, owned by the defendants Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Company, and all stock held by any two or more of them jointly, aggregated the following:

Separate	122,100
Joint	None.

13. That the transfer books of the Southern Pacific Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 18th day of March, 1904, and that at the close of business on said date the separate holdings of the stock of said Southern Pacific Company, owned by the defendants, Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	27,900
Joint	None.

14. That the transfer books of the Southern Pacific Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 15th day of
5631 March, 1905, and that at the close of business on said date the separate holdings of the stock of said Southern Pacific Company, owned by the defendants, Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	45,145
Joint	None.

15. That the transfer books of the Southern Pacific Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 15th day of March, 1906, and that at the close of business on said date the separate holdings of the stock of said Southern Pacific Company, owned by the defendants, Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	57,500
Joint	None.

16. That the transfer books of the Southern Pacific Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 15th day of March, 1907, and that at the close of business on said date the separate holdings of the stock of said Southern Pacific Company, owned by the defendants, Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any
5632 two or more of them jointly, aggregated the following:

Separate	17,740
Joint	None.

17. That the transfer books of the Atchison, Topeka & Santa Fe Railway Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 22nd day of September, 1904, and that at the close of business on said date the separate holdings of the stock of said The Atchison, Topeka & Santa Fe Railway Company, owned by the defendants, Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	3,000
Joint	178,000

18. That the transfer books of The Atchison, Topeka & Santa Fe Railway Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 21st day of September, 1905, and that at the close of business on said

date the separate holdings of the stock of the said The Atchison, Topeka & Santa Fe Railway Company owned by the defendants, Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	100
Joint	162,860

5633 19. That the transfer books of The Atchison, Topeka & Santa Fe Railway Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 20th day of September, 1906, and that at the close of business on said date the separate holdings of the stock of said The Atchison, Topeka & Santa Fe Railway Company, owned by the defendants, Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	14,700
Joint	None

20. That the transfer books of The Atchison, Topeka & Santa Fe Railway Company closed for the purposes of the annual meeting of the stockholders of that company for the election of directors on the 19th day of September, 1907, and that at the close of business on said date the separate holdings of the stock of said The Atchison, Topeka & Santa Fe Railway Company, owned by the defendants, Harriman, Frick, Kahn, Rogers, Schiff and Stillman, and the firm of Kuhn, Loeb & Co., and all stock held by any two or more of them jointly, aggregated the following:

Separate	46,800
Joint	None.

R. S. LOVETT,
Solicitor for Union Pacific Railroad Company, Oregon Short Line Railroad Company, Southern Pacific Company and E. H. Harriman.

CRAVATH, HENDERSON & DE GERSDORFF.
Solicitors for Otto H. Kahn and Jacob H. Schiff.

JAMES M. BECK, (M. E. K.)
Solicitor for H. H. Rogers and James Stillman.

D. T. WATSON,
R. S. L.
Solicitor for H. C. Frick.

5634 It is stipulated that upon the 4th day of September, 1900, the 3rd day of September, 1901, the 2nd day of September, 1902, the 29th day of August, 1903, and the 31st day of August, 1904, dates mentioned in the stipulation set forth above as Complainant's Exhibit No. 200, the defendant H. C. Frick owned no stock of defendant Union Pacific Railroad Company; and that on March 15, 1900,

March 16, 1901, March 22, 1902, April 3, 1903, March 18, 1904, and March 15, 1905, dates mentioned in the stipulation set forth above as Complainant's Exhibit No. 200, the defendant H. C. Frick owned no stock of defendant Southern Pacific Company.

Paper marked Complainant's Exhibit 201.

Mr. SEVERANCE. It is stipulated that Complainant's Exhibit 201, showing the method of dividing transcontinental freight rates between different carriers interested, was prepared by Mr. J. C. Stubbs, traffic director of the defendants, Southern Pacific Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon Railroad & Navigation Company, and that the same is correct, it being understood that if through any mistake any of said formulæ are found to be incorrect, the same may be corrected by either party to conform to the facts. Said formulæ are numbered from 1 to 45 inclusive.

Complainant's Exhibit 201 is as follows:

5635 COMPLAINANT'S EXHIBIT 201.

MEMORANDA

SHOWING METHOD USED TO DIVIDE (DISTRIBUTE) TRANSCONTINENTAL FREIGHT RATES, NAMELY: ARBITRARY ALLOWANCES FOR RIVER AND BAY TRANSFER, AND THE DISTRIBUTION OF THE REMAINDER BY PERCENTAGES—ILLUSTRATED BY APPLICATION TO A RATE OF $1.00 PER 100 POUNDS—FROM EACH OF SEVERAL IMPORTANT SHIPPING POINTS (WHICH ARE REPRESENTATIVE POINTS FOR A GROUP) TO SAN FRANCISCO.

Same formulas are applicable to any rate between same points.

1. Omaha to San Francisco via Ogden:
   Deduct 5 cents per 100 lbs.
   (San Francisco Bay) remainder:
   Line Omaha to Ogden 54%..... 51.3
   Line Ogden to San Francisco 46%+5¢..... 48.7
   $1.00

2. Council Bluffs to San Francisco via Ogden:
   Deduct 10 cents per 100 lbs.
   (Missouri River bridge 5¢, San Francisco Bay 5¢) remainder:
   Line Council Bluffs to Ogden 54%+5¢..... 53.6
   Line Ogden to San Francisco 46%+5¢..... 46.4
   $1.00

3. Kansas City to San Francisco via Ogden:
   Same as No. 1.

4. Kansas City to San Francisco via El Paso:
   Deduct 5¢ per 100 lbs.
   (San Francisco Bay) remainder:
   Line Kansas City to El Paso 47.3%..... 44.9
   Line El Paso to San Francisco 52.7%+5¢..... 55.1
   $1.00

5. St. Louis to San Francisco via Co. Bluffs and Ogden:
   Line St. Louis to Co. Bluffs 11%..... 11.
   Remainder same as No. 2.
   Co. Bluffs to Ogden..... 47.7
   Ogden to San Francisco..... 41.3
   $1.00

6. St. Louis to San Francisco via Kansas City and Ogden:
Line St. Louis to Kansas City 11% ..... 11.
Remainder same as No. 3 and No. 1, viz:
Line Kansas City to Ogden 45.4
Line Ogden to San Francisco 43.6
$1.00

7. St. Louis to San Francisco via El Paso:
Deduct 5 cents per 100 lbs.
(San Francisco Bay) remainder:
Line St. Louis to El Paso 51% 48.45
Line El Paso to San Francisco 49%+5¢ 51.55
$1.00

8. St. Louis to San Francisco via New Orleans:
Deduct 5 cents per 100 lbs.
(San Francisco Bay) remainder:
Line El Paso to San Francisco 49%+5¢ 51.5
Remainder:
Line New Orleans to El Paso 62.5% 30.3
Line St. Louis to New Orleans 37.5% 18.2
$1.00

9. Chicago to San Francisco via Co. Bluffs and Ogden:
Deduct 5 cents per 100 lbs.
(Missouri River bridge) remainder:
Line Chicago to Co. Bluffs 15% 14.2
Remainder plus 5¢ per 100 lbs. same as No. 2:
Line Co. Bluffs to Ogden 45.9
Line Ogden to San Francisco 39.9
$1.00

10. Chicago to San Francisco via Kansas City and Ogden:
Deduct 5 cents per 100 lbs.
(Missouri River bridge) remainder:
Line Chicago to Kansas City 15% 14.2
Remainder plus 5¢ per 100 lbs. same as No. 1 & 3:
Line Kansas City to Ogden 43.6
Line Ogden to San Francisco 42.2
$1.00

11. Chicago to San Francisco via Kansas City and El Paso:
Deduct 5 cents per 100 lbs.
(Missouri River bridge) remainder:
Line Chicago to Kansas City 15% 14.2
Remainder plus 5¢ per 100 lbs. same as No. 4.
Line Kansas City to El Paso 38.2
Line El Paso to San Francisco 47.6
$1.00

12. Chicago to San Francisco via New Orleans:
Deduct 10 cents per 100 lbs.
(Cairo 2¢, New Orleans 3¢, San Francisco 5¢) remainder:
Line Chicago to New Orleans 24.3%+2¢ 23.9
Line New Orleans to El Paso 32.2%+3¢ ..... 32.
Line El Paso to San Francisco 43.5%+5¢ 41.1
$1.00

13. Cincinnati to San Francisco via Chicago & Co. Bluffs:
Line Cincinnati to Chicago 12% ..... 12.
Remainder same as No. 9, viz:
Line Chicago to Council Bluffs 12.4
Line Council Bluffs to Ogden 40.4
Line Ogden to San Francisco 35.2
$1.00

14. Cincinnati to San Francisco via St. Louis & Kansas City:
Line Cincinnati to E. St. Louis 15.5% 15.5
Remainder—deduct (2¢ per 100 lbs. Mississippi River):
Line E. St. Louis to Kansas City 11% + 2¢ 11.1
Remainder same as No. 3 & 1, viz:
Line Kansas City to Ogden 36.9
Line Ogden to San Francisco 36.5
$1.00

15. Cincinnati to San Francisco via St. Louis & El Paso:
Line Cincinnati to St. Louis 15½% 15.5
Deduct 7 cents per 100 lbs.
(Mississippi River 2¢. San Francisco Bay 5¢) remainder:
Line St. Louis to El Paso 51% + 2¢ 41.5
Line El Paso to San Francisco 49% + 5¢ ..... 43.
$1.00

16. On traffic from Cincinnati, Pittsburg and New York to San Francisco, via New Orleans, the Southern Pacific Company west of El Paso receives the same revenue as on traffic routed via St. Louis.

17. Cincinnati to San Francisco via New Orleans:
Deduct Southern Pacific Company west of El Paso proportion as per No. 15, viz: 43 cents, remaining 57 cents divides:
Deduct 3¢ per 100 lbs. (New Orleans transfer) remainder:
Line Cincinnati to New Orleans 40½% 21.9
Line New Orleans to El Paso 59½% + 3¢ 35.1
Line El Paso to San Francisco ..... 43.
$1.00

18. Pittsburg to San Francisco via Chicago & Co. Bluffs:
Line Pittsburg to Chicago 15% ..... 15.
Remainder same as No. 9, viz:
Line Chicago to Council Bluffs ..... 12.
Line Council Bluffs to Ogden ..... 39.
Line Ogden to San Francisco ..... 34.
$1.00

19. Pittsburg to San Francisco via St. Louis & Kansas City:
Line Pittsburg to E. St. Louis 18½% 18.5
Remainder—deduct 2¢ per 100 lbs. (Mississippi River):
Line E. St. Louis to Kansas City 11% + 2¢ 10.7
Remainder same as No. 3 & 1, viz:
Line Kansas City to Ogden 35.5
Line Ogden to San Francisco 35.8
$1.00

20. Pittsburg to San Francisco via St. Louis & El Paso:
Line Pittsburg to St. Louis 18½¢ 18.5
Deduct 7 cents per 100 lbs.
(Mississippi River 2¢. San Francisco Bay 5¢) remainder:
Line St. Louis to El Paso 51% + 2¢ ..... 40.
Line El Paso to San Francisco 49% + 5¢ 41.5
$1.00

21. Pittsburg to San Francisco via Cincinnati & New Orleans:
Deduct Southern Pacific Company west of El Paso proportion as per No. 20 (See No. 16), viz: 41.5¢, remaining 58.5¢ divides:
Line Pittsburg to Cincinnati 13% of gross rate ..... 13.
Remaining 45.5¢ divides:
Deduct 3¢ per 100 lbs. (New Orleans transfer):
Line Cincinnati to New Orleans 40.5% 17.2
Line New Orleans to El Paso 59.5% + 3¢ 28.3
Line El Paso to San Francisco 41.5
$1.00

22. New York to San Francisco via Chicago & Co. Bluffs:
Line New York to Chicago 25% ..... 25.
Remainder same as No. 9, viz:
Line Chicago to Council Bluffs 10.5
Line Council Bluffs to Ogden 34.4
Line Ogden to San Francisco 30.1
$1.00

23. New York to San Francisco via St. Louis & Kansas City:
Line New York to E. St. Louis 29% ..... 29.
Remainder—deduct 2¢ per 100 lbs.
(Mississippi River):
Line E. St. Louis to Kansas City 11%+2¢ 9.6
Remainder same as No. 3 & 1, viz:
Line Kansas City to Ogden 30.5
Line Ogden to San Francisco 30.9
$1.00

24. New York to San Francisco via St. Louis & El Paso:
Line New York to St. Louis 29% ..... 29.
Deduct 7 cents per 100 lbs.
(Mississippi River 2¢, San Francisco Bay 5¢)
Remainder:
Line St. Louis to El Paso 51% + 2¢ 34.6
Line El Paso to San Francisco 49% + 5¢ 36.4
$1.00

25. New York to San Francisco via Cincinnati & New Orleans:
Deduct Southern Pacific Company west of El Paso proportion as per No. 24 (see No. 16), viz: 36.4¢, remaining 63.5¢ divides:
Line New York to Cincinnati 22% of gross rate ..... 22.
Remaining 41.6¢ divides:
Deduct 3¢ per 100 lbs. (New Orleans transfer)
Line Cincinnati to New Orleans 40.5% 15.6
Line New Orleans to El Paso 59.5%+3¢ ..... 26.
Line El Paso to San Francisco 36.4
$1.00

Deductions and percentage proportions taken by lines east of Council Bluffs, Kansas City, St. Louis, Chicago, and Cincinnati, are the same on traffic to Los Angeles or Portland as to San Francisco.

26. Council Bluffs, Omaha or Kansas City to Los Angeles via Ogden (Southern Pacific):
Line Missouri River to Ogden 47% 47
" Ogden to Los Angeles 53% 53
$1.00

27. Council Bluffs, Omaha or Kansas City to Los Angeles via Salt Lake (San Pedro):
Line Council Bluffs to Ogden 57.1%—10% 51.4
" Ogden to Salt Lake 10% of 57.1% 5.7
" Salt Lake to Los Angeles 42.9% 42.9
$1.00

28. Kansas City to Los Angeles via El Paso:
Line Kansas City to El Paso 47.3% 47.3
" El Paso to Los Angeles 52.7% 52.7
$1.00

29. St. Louis to Los Angeles via El Paso:
Line St. Louis to El Paso 51% 51
" El Paso to Los Angeles 49% 49
$1.00

30. St. Louis to Los Angeles via New Orleans:
Line El Paso to Los Angeles 49% ..... 49.
Remainder:
Line New Orleans to El Paso 62.5 ..... 31.9
" St. Louis to New Orleans 37.5 ..... 19.1
$1.00

31. Chicago to Los Angeles via New Orleans:
Deduct 5¢ per 100 lbs.
(Cairo 2¢, New Orleans 3¢.)
Remainder:
Line Chicago to New Orleans 24.3%+2¢ 25.1
" New Orleans to El Paso 32.2%+3¢ 33.6
" El Paso to Los Angeles 43.5% 41.3
$1.00

32. Council Bluffs to Portland via Granger (Union Pacific):
Deduct 10¢ per 100 lbs.
(5¢ Missouri River bridge, 5¢ Willamette River bridge.)
Remainder:
Line Council Bluffs to Granger 48%+5¢ 48.2
" Granger to Huntington 27% 24.3
" Huntington to Portland 25%+5¢ 27.5
$1.00

33. Council Bluffs to Portland via Salt Lake (D. & R. G.):
Deduct 10¢ per 100 lbs.
(5¢ Missouri River bridge, 5¢ Willamette River bridge.)
Remainder:
Line Council Bluffs to Denver 18%+5¢ 21.2
" Denver to Salt Lake 30% ..... 27.
" Salt Lake to Huntington 27% 24.3
" Huntington to Portland 25%+5¢ 27.5
$1.00

34. Omaha or Kansas City to Portland:
Same as 32 & 33, except no deduction for Missouri River Bridge.

35. Council Bluffs to Portland via Sacramento—Canceled:
Deduct 10¢ per 100 lbs.
(5¢ Missouri River bridge, 5¢ Willamette River bridge.)
Remainder:
Line Council Bluffs to Ogden 42%+5¢ 43.8
" Ogden to Portland 58%+5¢ 57.2
$1.00

36. Omaha or Kansas City to Portland:
Same as 35, except no deduction for Missouri River bridge.

37. Kansas City to Portland via El Paso:
Deduct 5¢ per 100 lbs.
(Willamette River bridge.)
Remainder:
Line Kansas City to El Paso 37.45% 35.6
" El Paso to Portland 62.55%+5¢ 64.4
$1.00

38. St. Louis to Portland via El Paso:
Deduct 5¢ per 100 lbs.
(Willamette River bridge.)
Remainder:
Line St. Louis to El Paso 40.82% 38.8
" El Paso to Portland 59.18%+5¢ 61.2
$1.00

39. St. Louis to Portland via New Orleans:
Deduct 5¢ per 100 lbs.
(Willamette River bridge.)
Remainder:
Line El Paso to Portland 59.18%+5¢ 61.2
Remainder:
Line New Orleans to El Paso 62.5% 24.2
" St. Louis to New Orleans 37.5% 14.6
$1.00

40. Chicago to Portland via New Orleans:
Deduct 10¢ per 100 lbs.
(2¢ Cairo, 3¢ New Orleans and 5¢ Portland.)
Remainder:
Line Chicago to New Orleans 19.9%+2¢ 19.9
" New Orleans to El Paso 26.4%+3¢ 26.8
" El Paso to Portland 53.7%+5¢ 53.3
$1.00

41. Atlantic Seaboard to Colorado via all rail:
Practically all of these rates base on Mississippi River; Un. Pac. receiving their percentage proportion of the Mississippi River—Colorado rate, viz:
Line Mississippi River to Missouri River 29.5% 29.5
" Missouri River to Colorado 70.5% 70.5
$1.00

42. Atlantic Seaboard to Colorado via South Atlantic Ports:
Line New York to Mississippi River 30.8% 30.8
" Mississippi River to Colorado 20.41% 20.41
" Missouri River to Colorado 48.79% 48.79
$1.00
On traffic from Atlantic Seaboard arbitraries to port first deducted.
Maximum proportions prescribed east of Mississippi River.

43. Atlantic Seaboard to Colorado via Galveston:
Deduct 5% of through rate for Marine Insurance.
Remainder:
Line Ft. Worth to Colorado 44% 41.8
Remainder:
Deduct 5¢ per 100 lbs. terminal arbitrary.
Remainder:
Line New York to Galveston 64.29% plus 5¢ (Marine Insurance) ..... 36.
Line Galveston to Ft. Worth 35.71% plus 5¢ (Terminal) .. 22.2
$1.00
Cost of lighterage deducted before prorating.
On traffic from Atlantic Seaboard territory arbitrary to port deducted before prorating.

44. Atlantic Seaboard to Colorado via New Orleans:
Deduct 5% of through rate for Marine Insurance.
Remainder:
Line New York to New Orleans 35%+5¢ 38.2
" New Orleans to Ft. Worth 21% ..... 20.
" Line Ft. Worth to Colorado 44% 41.8
$1.00
Cost of lighterage deducted before prorating.
On traffic from Atlantic Seaboard territory arbitrary to port deducted before prorating.

45. Atlantic Seaboard—Utah Common Points:

In the division of through rates from Atlantic Seaboard to Utah Common Points, the lines west of the Colorado Common Point line receive 62½% of the current Missouri River-Utah Common Point rate. The balance east of the Colorado Common Points divides in 42, 43 & 44.

5646 Mr. SEVERANCE. It is stipulated that R. P. Schwerin, whose testimony given before the Interstate Commerce Commission under date of January 29, 1907, has been, by consent, incorporated in the testimony in this case, has been obliged to leave New York, and so cannot be produced as a witness at this hearing, would, if present, testify as follows:

"Since the date of my testimony before the Interstate Commerce Commission under date of January 29, 1907, there has been no change whatever in the operation of the steamers between San Francisco and the Isthmus of Panama. On the line between San Francisco and Portland, the service has been changed from a five days' to a seven days' service, but the aggregate tonnage of the two steamers on the seven-day service is greater than the two steamers previously operated under the five days' service. That as between San Francisco and the Orient there has been no change in the operation of the steamers of the Pacific Mail Steamship Company or the Japanese line, except that the Japanese line has replaced two of its smaller boats with newer and larger ones. That the Occidental & Oriental Steamship Company is being liquidated, and the one steamer which was chartered and operated by said Occidental & Oriental Steamship Company, in 1907, between San Francisco and the Orient, is now operated on the same route, on behalf of its owners, with the Pacific Mail Steamship Company as agents. There has been no change in the routing of the homeward business as between connecting rail lines at San Francisco."

5647 Mr. LOVETT. It is stipulated that in April, 1909, contracts were made by the Union Pacific Railroad Company with the Newport News Shipbuilding & Dry Dock Company for the construction of two first class passenger and freight ships, of about 3,800 tons each, for operation between San Francisco and Portland by the San Francisco & Portland Steamship Company, either through ownership or under charter, such ships to be delivered in January, 1910.

5648 Mr. LOVETT. It is stipulated that the testimony of Alex. Millar, as contained in the printed record of the testimony, at page 232, to the effect that the Southern Pacific Company owned a portion of the stock of the Occidental & Oriental Steamship Company, is inaccurate, but the exact relations of the ownership of that stock to the Southern Pacific Company may be covered hereafter by further stipulation or by testimony.

Mr. LOVETT. It is stipulated that there shall be substituted for the testimony of Alex. Millar, at page 232 of the printed record of the

testimony, to the effect that the steamers "Aragonia" and "Numentia" were owned by the Union Pacific Railroad Company, the statement that they were, at the time mentioned in his testimony, chartered and operated by the Portland & Asiatic Steamship Company.

Mr. LOVETT. It is further stipulated that William Mahl, comptroller of the Union Pacific Railroad Company and Oregon Short Line Railroad Company, if called as a witness, would testify that the Union Pacific Railroad Company and Oregon Short Line Railroad Company have disposed of all of the stock of the Northern Pacific Railway Company and Great Northern Railway Company formerly owned by them, and at this time neither the Union Pacific Railroad Company nor the Oregon Short Line Railroad Company owns, directly or indirectly, any stock of either the Great Northern Railway Company or the Northern Pacific Railway Company; and it is further stipulated that said Mahl would also testify that neither
5649 the Southern Pacific Company nor the Oregon Railroad & Navigation Company has ever owned, directly or indirectly, any stock of the Northern Pacific Railway Company or of the Great Northern Railway Company.

Mr. LOVETT. It is further stipulated that R. S. Lovett was elected a director and a member of the executive committee of the San Pedro, Los Angeles & Salt Lake Railroad Company to succeed William D. Cornish, deceased, and that the said R. S. Lovett still occupies such offices.

Mr. SEVERANCE. Counsel for defendants is having prepared a map showing all of the transcontinental lines, and if such map, when introduced, does not show, to the satisfaction of counsel for the complainant, the location of the Northern Pacific Railway Company's lines, the Great Northern Railway Company's lines, and the Chicago, Burlington & Quincy Railway Company's lines, the complainant may at any time put in a map to show the same, with the same effect as though the same were introduced at this time.

Mr. LOVETT. It is stipulated that the Empire Construction Company, the Los Angeles Terminal Land Company, and the California Improvement Company have been wound up and dissolved.

Mr. LOVETT. It is stipulated that the fast train service for citrus fruit from Los Angeles to Chicago, referred to in the testimony of J. Ross Clark and R. E. Wells, taken before the Interstate Commerce Commission in 1907 and read into the record in this case, has never been resumed.

There is no Complainant's Exhibit 202.

5650 [Paper marked Complainant's Exhibit 203.]

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 203, being a duly certified copy of the Articles of Incorporation of the San Pedro, Los Angeles & Salt Lake Railroad Company; and it is

agreed that the reporter may make a copy of the said exhibit and file it as Exhibit 203, in lieu of filing the said certified copy.

It is stipulated that the original of said articles of incorporation was filed in the office of the Secretary of State of the State of Utah on the 28th day of March, 1901; that the same was filed in the office of the Recorder of Lincoln County, Nevada, on April 8, 1901; that the same was filed in the office of the Secretary of the Interior on April 30, 1901, and approved by the Department of the Interior on June 4, 1901. It is understood that the stipulation as to the filing in the office of the Recorder of Lincoln County, Nevada, and in the office of the Secretary of the Interior and the date of the approval by the Department of the Interior, is subject to correction if it should appear that said dates are not correct.

It is also stipulated that the Articles of Incorporation of the San Pedro, Los Angeles & Salt Lake Railway Company were filed in California, and in various counties in said State of California at the dates stated in the answer of said company. This stipulation is made subject to correction, if it be found that such allegations are incorrect.

Complainant's Exhibit 203 is as follows:

5651 ARTICLES OF INCORPORATION
OF
SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY.

UNITED STATES OF AMERICA
State of Utah, County of Salt Lake } *ss.*

Know all men by these presents, That we, the undersigned, all of whom are citizens of the United States, and five of whom are residents of the State of Utah, being desirous of forming a corporation, for the purposes hereinafter set forth, under and pursuant to Title Eleven (11) of the Revised Statutes of Utah of 1898, and the Amendments thereof, and particularly under the provisions of Chapter Seven (7), of said Title, relating to railroad corporations, and the amendments thereto, and of an act entitled "An Act to Codify and Revise Certain Laws of this State Providing for the Formation of Corporations for the purpose of purchasing, constructing, Acquiring, Owning, Maintaining, Operating or extending Railroad Lines, Franchises Properties, and Appurtenances, Authorizing the Issue by such Corporations of Stocks and Bonds and other Securities, and the making of Deeds of Trust and Mortgages, and Defining certain Rights and Powers of such Corporations, and to Repeal the Following named Acts and parts of Acts, namely: Chapter 1, Laws of Utah, 1899: Chapter 17, Laws of Utah, 1899: Chapter 2, Laws of Utah, 1901; Chapter 3, Laws of Utah, 1901; Sections 431, 432, 433, 435 and 442, of the Revised
5652 Statutes of Utah, 1898." approved March Seventh 1901, do hereby enter into and adopt the following agreement, and

ARTICLES OF INCORPORATION.

ARTICLE I.

The name of the Corporation hereby formed shall be "San Pedro, Los Angeles & Salt Lake Railroad Company".

ARTICLE II.

The said corporation is organized in Salt Lake City, State of Utah.

ARTICLE III.

The names of the Incorporators and their several places of residence are as follows:

	Names.	Places of residence.
	William A. Clark	Butte, Montana.
	R. C. Kerens	St. Louis, Missouri.
	J. Ross Clark	Los Angeles, California.
	W. S. McCornick	Salt Lake City, Utah.
	David Keith	Salt Lake City, Utah.
	Thomas Kearns	Salt Lake City, Utah.
	Chas. O. Whittemore	Salt Lake City, Utah.
	Reed Smoot	Provo, Utah.
	E. W. Clark	Ophir, Utah.
	Charles Clark	Cental Township, Missouri.
	S. A. Bemis	St. Louis, Missouri.
	Perry S. Heath	Muncie, Indiana.
	Richard Kerens, Jr.	St. Louis, Mo.
	Charles W. Clark	Butte, Montana.
5653	George B. Leighton	St. Louis, Mo.
	T. E. Gibbon	Los Angeles, California.
	William B. Clark	Kansas City, Missouri.
	A. H. Handlan	St. Louis, Missouri.

ARTICLE IV.

The said corporation shall continue in existence for a period of One hundred (100) years from and after the date of this agreement.

ARTICLE V.

The purposes and business for which this corporation is organized are to acquire, by constructing, purchasing, leasing, or otherwise, and to equip, own, control, maintain, and operate by steam or electric power, for the carriage of passengers and freight for hire, a main or trunk line of railway, extending from Salt Lake City, in the County of Salt Lake, in the State of Utah, by what shall appear to be the most feasible and favorable route, to a terminal point at East San Pedro on the Bay of San Pedro on the shores of the Pacific Ocean, in the County of Los Angeles, in the State of California, the said line of railroad having a terminus in said Salt Lake City, and extending

thence in an approximately southwesterly direction through the counties of Salt Lake, Utah, Tooele, Juab, Millard, Beaver and Iron, in the State of Utah; the County of Lincoln, in the State of Nevada; and the Counties of San Bernardino, Riverside, Orange and Los Angeles, in the State of California, to the said terminal point at the Harbor of San Pedro on the shores of the Pacific Ocean, to-
5654 gether with all necessary and appropriate branch lines and extensions of said line in and through said States, and particularly;

1. A branch line extending from the point on said main line which shall appear to be the most appropriate point for a junction of such branch line with said main line in an approximately westerly direction through the counties of Tooele and Juab to a place in the Deep Creek Valley named Ibapah, in said Tooele County, and;

2. A branch line extending from the point on said main line which shall appear to be the most appropriate point for a junction of such branch line with said main line in an approximately easterly direction through the County of Iron to Cedar City, in said County;

Also for the purpose of buying, owning, maintaining, operating and further extending the railroad rights, property and franchises of any railroad corporation or corporations now or hereafter owning railroad rights, property and franchises in the State of Utah, and which said railroad rights, property and franchises are, or may be so situated and located as to conveniently and appropriately become and be made a portion of the said main line of railroad hereinbefore described, or a branch line or branch lines thereof and connecting with the said main line.

Also to purchase the property and franchises or any part thereof, of any railroad corporation now or hereafter owning railroad property or franchises in the State of Nevada, and which railroad
5655 property and franchises are, or may be so situated and located as to conveniently and appropriately become and be made a portion of the said main line of railroad hereinbefore described; or a branch line or branch lines connected therewith: and to hold and operate such railroad, franchises and property, and to build and operate extensions and branches thereof in the state of Nevada, and to exercise all powers in said State of Nevada conferred by the laws of said state upon railroad corporations.

Also to purchase, receive, hold and operate the property and franchises of any railroad company now or hereafter owning any railroad property and franchises in the State of California, which said property and franchises are, or may be so situated and located as to conveniently and appropriately become and be made a part of the said main line of railroad hereinbefore described, or a branch line or branch lines thereof and connecting with said main line: and especially to purchase the railroad property and franchises of that certain railroad corporation, organized and existing under the laws

of the State of California, and known as and named "Los Angeles Terminal Railway Company," the said property and franchises of said Los Angeles Terminal Railway Company being situated in the said County of Los Angeles in the State of California, and hereinafter more particularly described; and to build on, hold, own and operate said railroad franchises and property, and to build and operate extensions and branches thereof, and especially to build and operate:

5656 1. An extension thereof from a point on the present existing line and property of said Los Angeles Terminal Railway Company at the City of Los Angeles in the said County of Los Angeles, and extending in an approximately north-easterly direction by what shall appear to be the most feasible route via the City of Riverside, and through the said Counties of Los Angeles, Orange, Riverside and San Bernardino, to a point on the boundary line between the States of California and Nevada, and so located and situated as to form and become, when so built, a portion of the said main line first hereinbefore described, and;

2. An extension or branch line thereof extending from a point on the present line of said Los Angeles Terminal Railway Company first above described, near Bixby Station, in an approximately southeasterly direction through the said counties of Los Angeles and Orange to the City of Santa Ana, and; such other extensions and branch lines in said State of California as may appear feasible and desirable in carrying on the business of this corporation.

Also to acquire and hold real estate for depot and depot grounds, warehouse, yards, and all other railroad purposes, and to construct and maintain all depots, warehouses and other facilities necessary and appropriate for carrying on the business of the said lines of railroad.

Also to acquire, own and hold franchises and real estate for constructing and maintaining wharves and to construct, own, maintain and operate wharves on navigable waters necessary or appropriate for carrying on the business of the said line of railroad.

5657 Also to construct, equip, own and operate any line or lines of telegraph or telephone which may be necessary or appropriate for use in carrying on the business of this corporation and in connection therewith, and in managing and operating the railroads thereof.

Also to acquire, hold, and own water rights and land for the purpose of taking therefrom coal, stone, petroleum, timber and all fuel and material necessary and appropriate to be used in connection with, and in carrying on the business of, this corporation.

Also to purchase, or otherwise lawfully acquire and own the capital stock or securities, or any part of the capital stock or securities of any other railroad corporation or corporations.

ARTICLE VI.

The length of the railroad proposed to be constructed, owned and operated by this corporation is as nearly as may be estimated eleven hundred (1,100) miles, and the estimated cost of construction and equipping the same is twenty-five million dollars ($25,000,000).

ARTICLE VII.

The general place of business of this corporation and the place where the meetings of its stockholders shall be held shall be at Salt Lake City, in the county of Salt Lake, in the State of Utah, but the corporation may have offices elsewhere at which meetings of its Board of Directors may be held, and such of its business may
5658 be carried on as shall be determined by its Board of Directors.

ARTICLE VIII.

Each party to this agreement has subscribed for, and agrees to take the amount and number of shares of the capital stock of this corporation set against his name and to pay for the same in cash, or in property to be acquired by the corporation, as follows:

Name	Number of shares.	Amount.	Cash or property.
William A. Clark	12,500	$1,250,000	Property.
R. C. Kerens	12,500	1,250,000	Property.
J. Ross Clark	1	100	Cash.
W. S. McCornick	1	100	"
David Keith	1	100	"
Thomas Kearns	1	100	"
Reed Smoot	1	100	"
E. W. Clark	1	100	"
Chas. O. Whittemore	1	100	"
Charles Clark	1	100	"
S. A. Bemis	1	100	"
Perry S. Heath	1	100	"
Richard Kerens	1	100	"
Chas. W. Clark	1	100	"
George B. Leighton	1	100	"
T. E. Gibbon	1	100	"
William B. Clark	1	100	"
A. H. Handlan	1	100	"

5659 And the property so to be acquired by this corporation, in consideration of, and by virtue of the above and foregoing subscriptions of William A. Clark for 12,500 shares, and R. C. Kerens, for 12,500 shares of said capital stock is all of the property and franchises at present owned and held by said Los Angeles Terminal Railway Company, and situate in the County of Los Angeles, in the State of California, and consisting of a line of standard gauge railroad, extending from the settlement of Altadena to East San Pedro, on the Bay of San Pedro in said County of Los Angeles, being the length of about forty-three and one-tenth (43.1) miles; also a branch line of standard gauge railroad extending from Glendale Junction on said line hereinbefore described, to a place called Verdugo, in San Fernando Valley, in said County of Los Angeles; said branch line

being about the length of seven and one-tenth (7.1) miles; also a branch line of standard gauge railroad extending from a point on said main line near the City of Pasadena, named Hartwell, to a stone quarry in Millard Canyon, being about the length of one and one-tenth (1.1) miles; also all real estate of every kind now owned and held by said Los Angeles Terminal Railway Company for wharves, warehouses, depot ground and other purposes, and all equipment, rolling stock and personal property, and all property both real, personal and mixed of every kind and character now owned and held by said Los Angeles Terminal Railway Company, and all the franchises for constructing and operating railroads, wharves and telegraph lines of every kind and character now owned and held by said Los Angeles Terminal Railway Company.

5660 The said property, so to be acquired by this corporation and hereinbefore described, being of the fair cash value of Five Millions of Dollars ($5,000,000.00), and to be deeded, assigned, transferred and conveyed to this corporataion in consideration of the issuance and delivery by it of the said 12,500 shares of stock above subscribed for by William A. Clark and the said 12,500 shares of stock above subscribed for by R. C. Kerens, and also in consideration of the issuance by this corporation and delivery to said William A. Clark of $1,250,000 of the four per cent bonds of this corporation, and to said R. C. Kerens of $1,250,000 of the four per cent bonds of this corporataion.

ARTICLE IX.

The amount of the capital stock of this corporation shall be twenty-five million dollars ($25,000,000.00), which shall be divided into and represented by two hundred and fifty thousand (250,000) shares, of the amount and par value of one hundred dollars ($100) each.

ARTICLE X.

The officers of this corporation shall consist of a Board of twelve (12) directors, a President, a first Vice-President, a Second Vice-President, a Third Vice-President, a Secretary and a Treasurer.

All of the Directors shall be stockholders of the corporation, and the President and Vice-President shall be members of the

5661 Board of Directors; the Secretary and the Treasurer may be elected from the Board of Directors or not, as the Board may determine. Five Directors shall constitute a quorum of the Board of Directors for the transaction of business, and shall, when properly assembled, be authorized and empowered to use and exercise all the corporate powers of this corporataion.

There shall be a general meeting of the stockholders of this corporation held on the third Monday in the month of November of each year hereafter, at such hour, and at such place in the City of Salt Lake, in the County of Salt Lake, and State of Utah, as the Board of Directors may in the by-laws to be adopted by them fix

and determine, at which general meeting the Board of Directors for the ensuing year shall be elected, by ballot and such other business may be transacted as may properly come before the said meeting. Immediately after the election of the Board of Directors, the Secretary of the Meeting shall notify the Directors of their election, and within thirty (30) days thereafter, they shall meet and organize as a board and shall elect the officers of the corporation hereinbefore provided for.

The Board of Directors elected at such general annual meeting, and all other officers above named, shall hold office for the term of one (1) year and until their successors are elected and qualified, unless removed as hereinafter provided.

The Board of Directors shall have power to manage and control the business and affairs of the corporation, to make, execute and
5662 issue bonds, and to secure the same by mortgage, lien or pledge on the corporation's property acquired, or to be acquired; to incur all indebtedness and make all contracts necessary and proper to carry into effect the object and purposes of the corporation, and to adopt and change such by-laws, not inconsistent with the laws of the State of Utah, as they may deem proper for the management of the affairs of the corporation, and generally to exercise all powers conferred upon Boards of Directors of corporations by the laws of the State of Utah.

Either of the officers or directors of this corporation may be removed at a stockholders meeting, duly called and held to consider the question of such removal when the holders of a majority of the capital stock of the corporation, either in person or by proxy, vote for such removal; and either or any of said officers or directors may resign by filing a written resignation with the Secretary of the corporation ten (10) days before the same is to take effect, but the Board may accept such resignation on shorter notice. Vacancies in the Board of Directors, caused by removal by a vote of the stockholders, may be filled by the vote of a majority of the stock represented at the meeting when the removal is made; all other vacancies, whether caused by resignation, removal, death or disability of directors or officers may be filled by the board of directors.

The following named persons shall be officers of this corporation to serve until the first general election for Directors, and until their successors are elected and qualified:

5663 William A. Clark ..... President and Director.
R. C. Kerens ..... First Vice-President and Director.
J. Ross Clark ..... Second Vice-President and Director.
T. E. Gibbon ..... Third Vice-President and Director.
T. F. Miller ..... Secretary and Director.
F. K. Rule ..... Treasurer.
W. S. McCornick ..... Director.
George B. Leighton ..... Director.
Thomas Kearns ..... Director.
Reed Smoot ..... Director.
E. W. Clark ..... Director.
Chas. W. Clark ..... Director.
Perry S. Heath ..... Director.

ARTICLE XI.

The individual or private property of the stockholders of this corporation shall not be liable for any of the debts, liabilities or obligations of this corporation.

In witness whereof, we have hereunto subscribed our names this 12th day of March, A. D. 1901.

WILLIAM A. CLARK,
R. C. KERENS,
J. ROSS CLARK,
W. S. MCCORNICK,
DAVID KEITH,
THOMAS KEARNS,
REED SMOOT,
E. W. CLARK,
CHAS. O. WHITTEMORE,
CHARLES CLARK,
S. A. BEMIS,
PERRY S. HEATH,
RICHARD KERENS, JR.,
CHARLES W. CLARK,
GEO. B. LEIGHTON,
T. E. GIBBON,
WILLIAM B. CLARK,
A. H. HANDLAN.

5664 STATE OF UTAH,
County of Salt Lake, ss.

On this 20th day of March, A. D. 1901, personally appeared before me, the undersigned, a Notary Public in and for the County of Salt Lake and State of Utah, W. S. McCornick, Chas. O. Whittemore and T. E. Gibbon, the signers of the above and foregoing Agreement and Articles of Incorporation, as parties thereto, and who severally duly acknowledged to me that they each of them respectively executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at Salt Lake City, State of Utah, the day and year above written.

[SEAL.]

WM. M. MCCREA,
Notary Public in and for the City and County of Salt Lake and State of Utah.

My commission expires July 18, 1904.

STATE OF UTAH,
County of Salt Lake, ss.

J. Ross Clark and Chas. O. Whittemore and T. E. Gibbon being first duly and severally sworn, each for himself deposes and says: That he is one of the incorporators of San Pedro, Los Angeles & Salt Lake Railroad Company, the corporation named in the foregoing Agreement and Articles of Incorporation; that it is the inten-

tion of affiants, and each of them to commence and carry on the business mentioned in said Agreement, and that the affiants,
5665 each of them, verily believe that each party to the agreement has paid the amount of the stock subscribed for by him; and that ten per cent (10%) of the stock subscribed by each stockholder mentioned and named in said agreement and ten per cent (10%) of the whole capital stock of said corporation has been paid in in money and in property described in said agreement, which has been conveyed to said corporation by deed actually executed and delivered.

J. Ross Clark,
Chas. O. Whittemore,
T. E. Gibbon.

Severally subscribed and sworn to before me this 20th day of March, A. D. 1901.

[NOTARIAL SEAL.] Wm. M. McCrea,
Notary Public in and for the
City and County of Salt Lake and State of Utah.

My Commission expires July 18, 1904.

State of Utah,
County of Salt Lake, } *ss.*

J. Ross Clark being first duly sworn deposes and says: I am acquainted with the franchises and property heretofore acquired and owned by Los Angeles Terminal Railway Company, a corporation organized and existing under the laws of the State of California, as said property and franchises exist and are described in the foregoing Agreement and Articles of Incorporation of San Pedro, Los Angeles & Salt Lake Railroad Company, and said franchises and property so described in said agreement and articles of incor-
5666 poration are reasonably worth the sum of Five million ($5,000,000) Dollars in cash, for which sum the said franchises and property was accepted by said San Pedro, Los Angeles & Salt Lake Railroad Company.

J. Ross Clark.

Subscribed and sworn to before me this 20th day of March, A. D. 1901.

Wm. M. McCrea,
Notary Public in and for the
City and County of Salt Lake, and State of Utah.

My commission expires July 18, 1904.

[NOTARIAL SEAL.]

State of Utah,
County of Salt Lake, ss.

Chas. O. Whittemore, being first duly sworn, deposes and says: I am acquainted with the franchises and property heretofore acquired

and owned by Los Angeles Terminal Railway Company, a corporation organized and existing under the laws of the State of California, as said property and franchises exist and are described in the foregoing agreement and articles of incorporation of San Pedro, Los Angeles & Salt Lake Railroad Company, and said franchises and property so described in said agreement and articles of incorporation are reasonably worth the sum of Five Million ($5,000,000) Dollars in cash, for which sum the said franchises and property was accepted by said San Pedro, Los Angeles and Salt Lake Railroad Company.

CHAS. O. WHITTEMORE.

5667 Subscribed and sworn to before me this 20th day of March, A. D. 1901.

WM M. MCCREA,
Notary Public in and for the
City and County Salt Lake and State of Utah.

My commission expires July 18, 1904.

[NOTARIAL SEAL.]

STATE OF UTAH,
County of Salt Lake. ss.

T. E. Gibbon being first duly sworn deposes and says: I am acquainted with the franchises and property heretofore acquired and owned by Los Angeles Terminal Railway Company, a corporation organized and existing under the laws of the state of California, as said property and franchises exist and are described in the foregoing Agreement and Articles of Incorporation of San Pedro, Los Angeles & Salt Lake Railroad Company, and said franchises and property so described in said agreement and articles of incorporation are reasonably worth the sum of Five Millions ($5,000,000) dollars in cash, for which sum the said franchises and property was accepted by said San Pedro, Los Angeles & Salt Lake Railroad Company.

T. E. GIBBON.

Subscribed and sworn to before me this 20th day of March A. D. 1901.

WM. N. MCCREA,
Notary Public in and for the
5668 *City and County of Salt Lake, and State of Utah.*

My commission expires July 18, 1904.

[NOTARIAL SEAL.]

STATE OF UTAH,
County of Salt Lake. ss.

J. Ross Clark and Chas. O. Whittemore and T. E. Gibbon, being first duly and severally sworn, each for himself says: that he is one of the incorporators of San Pedro, Los Angeles & Salt Lake Railroad Company, the corporation named in the foregoing agreement and articles of incorporation, that the sum of one thousand ($1,000) dollars for each mile in length of the railroad proposed to be constructed and acquired by said San Pedro, Los Angeles & Salt Lake Railroad

Company, to-wit: eleven hundred (1100) miles, as set forth in said articles of incorporation has been subscribed of the stock of said corporation, and that ten per cent (10%) of the stock subscribed for by each stockholder has been paid in to said corporation in money and property.

J. ROSS CLARK,
CHAS. O. WHITTEMORE,
T. E. GIBBON.

[NOTARIAL SEAL.]

Severally subscribed and sworn to before me this 20th day of March, A. D. 1901.

WM. N. MCCREA,
Notary Public in and for the
City and County of Salt Lake, and State of Utah.

My commission expires July 18, 1904.

5669 STATE OF UTAH,
County of Salt Lake. ss.

I, John James, County Clerk in and for the County of Salt Lake, State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the Articles of Incorporation and Oaths and Acknowledgments of Incorporators of "San Pedro, Los Angeles & Salt Lake Railroad Company" as appears of record in my office.

In witness whereof, I have hereunto set my hand and affixed my official seal this 20th day of March, 1901.

JOHN JAMES,
County Clerk.

[SEAL. 10 ct. Rev. Stamp.]

STATE OF UTAH,
County of Salt Lake. ss.

I, John James, County Clerk in and for the County of Salt Lake, State of Utah, do hereby certify that the "San Pedro, Los Angeles & Salt Lake Railroad Company" has duly filed in my office the Agreement of Incorporation, duly acknowledged, together with the oath of the incorporators, and oath of office of each officer, as required by Chapter 1 of Title 11, Revised Statutes of Utah, and Chap. 26 of the Laws of Utah, 1901.

In witness whereof, I have hereto set my hand and affixed my official seal this 20th day of March, 1901.

JOHN JAMES,
County Clerk.

[SEAL. 10 ct. Rev. Stamp.]

5670 UNITED STATES OF AMERICA.

STATE OF UTAH,
Office of the Secretary of State. } ss.

I, James T. Hammond, Secretary of State of the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of certified copy of Articles of Incorporation of San Pedro, Los Angeles

& Salt Lake Railroad Company, filed in my office the 28th day of March, 1901, according to and in compliance with the laws of this state, as the same appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Utah, this 25th day of April, A. D. 1901.

J. T. HAMMOND,
Secretary of State.

[THE GREAT SEAL OF THE STATE OF UTAH. 1896.]

(10 ct. Int. Rev. Stamp.)

5671 *Endorsed on the cover of this document is the following:*

No. 709

U. S. CIRCUIT COURT

Ninth Circuit
District of Nevada.

Utah, Nevada & Cal'a Rd. Co.
vs.
The Utah & Cal'a Ry. Co. et al.

1901–68679–1

Articles of Incorporation
of
The San Pedro, Los Angeles
and
Salt Lake R. R. Co.

Filed Apl. 30, 1901.

Dept. of the Interior.
Received.
5227 June 4, 1901.
L. & R. R. Div.

DEFTS. EXHIBIT G.

Filed June 24, 1901.
T. J. EDWARDS,
Clerk.

An adjournment was then taken until the morning of Monday, June 14, 1909, at 10.30 a. m.

5672 ROOM 515, CUSTOM HOUSE, NEW YORK, N. Y.,
Monday, June 14, 1909—10.30 a. m.

Proceedings were resumed before Hon. Sylvester G. Williams, Special Examiner, at the above time and place.

Present: On behalf of the Complainant, Mr. C. A. Severance; on on behalf of the Defendants, Mr. R. S. Lovett.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 204, which is a contract of March 1, 1908. It is stipulated that Complainant's Exhibit 204 is a correct copy of the contract between the San Pedro, Los Angeles & Salt Lake Railroad Company and the Pacific Fruit Express Company, under which the cars of the latter are being operated over the railroad of the former, and that such copy may be used with the same force and effect as the original.

Complainant's Exhibit 204 is as follows:

COMPLAINANT'S EXHIBIT 204.

This agreement, made and entered into this first day of March, 1908, by and between the San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation of the State of Utah, hereinafter designated as "Railroad Company," as party of the first part, and the Pacific Fruit Express Company, a corporation of the State of Utah, hereinafter designated as "Pacific Company," as party of the second part.

Witnesseth that:

Whereas, the Pacific Company owns and operates a line of refrigerating and ventilating cars, and is engaged in the
5673 business of operating said refrigerating and ventilating line of cars for carriage of deciduous, citrus and perishable fruits, vegetables, and other perishable articles, and,

Whereas, said Pacific Company desires to become the agent of said Railroad Company, and to perform the refrigerating and ventilating service required by said Railroad Company, in the operation of its business as a common carrier;

Now therefore, in consideration of the covenants and agreements of the respective parties hereto, hereinafter written, it is covenanted and agreed as follows:

ARTICLE I.

The Pacific Company, on its part hereby covenants and agrees as follows:

SECTION 1. That it will, from time to time, and at all times, upon reasonable notice, during the term of this agreement, furnish and supply to the Railroad Company, a sufficient number of refrigerator and ventilating cars to enable the Railroad Company to promptly and efficiently handle and transport all such deciduous fruits, citrus fruits, vegetables, and other perishable articles and goods which the business of the Railroad Company and its duties as a common carrier shall from time to time require, whether the same originates on lines of the Railroad Company's railroad or elsewhere.

SECTION 2. That said refrigerator and ventilating cars shall at all times be of the latest improved pattern in common and general use with respect to size, strength, weight and the cooling and ventilation devices, and equipped with automatic couplers, automatic air
5674 brakes, and in all respects suitable for transportation over all standard gauge lines of railroad.

SECTION 3. That it will at all times repair and maintain the inside work upon all of said refrigerator and ventilating cars so owned and furnished by it, including all such portions of said cars as pertain to refrigeration and ventilation, free of cost to said Railroad Company, and it will also repair any part of any other refrigerator or ventilating car tendered by Railroad Company so far as the refrigeration or ventilating parts thereof may need the same, while in course of transportation over the lines of railroad of said Railroad Company, or while in service under the direction of said Railroad Company.

SECTION 4. That it will perform as the agent of said Railroad Company, all of the icing and refrigeration service, and furnish all supervision necessary to the effective refrigeration and ventilation of any perishable fruits or other perishable commodities which shall or may be carried in refrigerator or ventilating cars over said Railroad Company's lines in the discharge of said Railroad Company's duties as a common carrier.

SECTION 5. That its obligations to furnish ice, refrigeration service and supervision for all of said cars, whether furnished by it or in use for such service on Railroad Company's lines, shall extend to and embrace all such service necessary or required while upon the lines of railroad of said railroad company, or in its possession, and also for the carriage of the same and the contents thereof to final
5675 destination according to the respective bills of lading issued by Railroad Company for the transportation of such cars to destination or to any point to which, under Railroad Company's tariffs, the same may be diverted; it being the intention hereof that the icing, refrigeration service and supervision undertaken by said Pacific Company embraces all such icing and other service, to the final original or diverted destination of the goods received by said Railroad Company for transportation to such final destination.

SECTION 6. That for the purpose of furnishing ice upon Railroad Company's lines for the purpose of this agreement, it will erect, maintain and operate upon Railroad Company's tracks, ice manufacturing plants of sufficient capacity, at Colton, California, and Las Vegas, Nevada, and at any other point or place which may hereafter be found necessary or convenient for the efficient performance of the business provided for herein, and it will also, from time to time, where necessary, provide sufficient ice houses for the storage of natural or manufactured ice which may be necessary for furnishing Railroad Company with ice for its use as a common carrier.

SECTION 7. That it will furnish to Railroad Company, at its icing stations upon said Railroad Company's lines, all ice which the Railroad Company may require in its business as a common carrier for supplying the refrigerator and ventilating cars being transported over said Railroad Company's lines.

SECTION 8. That it will also furnish to said Railroad Com-
5676 pany, upon its lines of railroad, at any station where the Pacific Company maintains an ice manufacturing or ice storage plant, any and all ice required by said railroad Company in connection with its business as a common carrier, not only for refrigerator and ventilating cars, but for its passenger stations, passenger trains, and all such other uses as may be necessary or required by the Railroad Company at prices to be from time to time agreed upon by the parties hereto, which prices for ice furnished under this section for other than "Refrigeration service", shall not exceed the actual cost of production plus ten per cent, the same to be paid for by the Railroad Company on monthly bills therefor furnished by said Pacific Company, on or before twenty days after the receipt of such monthly bills.

SECTION 9. That it will fix and prescribe its rates of charges to the public for the icing charges, supervision refrigeration and ventilation of all fruits, vegetables and other perishable goods which shall be carried in said cars so owned and furnished by the Pacific Company, or in any other cars transported upon the Railroad Company's lines of railroad delivered to it for carriage by consignees or by connecting lines of Railroad, which said rates shall be reasonable rates approved by the Railroad Company, or found or determined by competent or lawful authority, and which rates shall, in no case or at any time, be higher or greater than rates for refrigeration or ventilation service in force over the lines of competing lines, and the said rates, when so fixed, shall be known as rates for "refrigeration
5677 service" and shall be furnished to Railroad Company for publication, and shall be by it, from time to time, published in its tariffs according to law, and filed with the Interstate Commerce Commission, and also as required to be published posted and filed under the law of any state having control or jurisdiction thereof; all such charges to the public shall be collected by said Railroad Company from the consignee or consignor, and paid over to said Pacific Company by said Railroad Company as the agent of said Pacific Company, and said charges shall only be made and collected according to the terms of the printed published and posted tariffs of the Railroad Company respecting the same as from time to time published and in force, and the same shall not be changed or modified, except to meet competitive rates, and except as provided by law or according to the terms of said tariffs, or by agreement of the parties lawfully made and lawfully put in force.

ARTICLE II.

The Railroad Company, on its part, hereby covenants and agrees as follows:

SECTION 1. That it will adopt, for use on its lines of railroad and for use on the lines of transportation which it may or can use lawfully, for service in the carriage of deciduous and citrus fruits, vegetables and other perishable articles, the cars and equipment owned and furnished by the Pacific Company, and to preferentially use said cars and equipment of the Pacific Company in its said business, but upon the distinct and perfect understanding that such pledge to use said cars and equipment shall not be exclusive in
5678 character so as to require the Railroad Company to decline to carry and transport, on an absolute equality, any and all business which may be tendered to it by consignors upon its own lines of railroad to be carried in refrigerator or ventilating cars of any other car lines or carrier, nor so as to prevent the Railroad Company from carrying over its lines of railroad any traffic in or transportation of any such goods which may be offered to it or obtained for it from the lines of any connecting carriers, with like quality of service, the intention being that the cars and equipment of the Pacific Company shall be preferentially used by the Railroad Company but not to the

exclusion of any other refrigerator or ventilating cars offered or tendered by any consignor or by any connecting carrier. It being further understood that in event the cars of any other railroad or car line are used for loading on rails of the Railroad Company, the rates to the public as heretofore mentioned shall apply to such foreign line cars used and shall accrue to the Pacific Company.

SECTION 2. That it will adopt any reasonable rate or charge fixed as provided by section 9, Article 1 hereof, for refrigeration, ventilation, icing and supervision in respect to the handling of perishable fruit or other perishable articles, which may be prescribed by the Pacific Company; that it will print, post and publish such charges according to the requirements of state or National Law; that it will collect all such charges made by said Pacific Company and so included in said tariffs, in force at the time of carriage of the Railroad Company from the consignors or consignees of such
5679 goods according to the circumstances of each particular case, and will account for and pay over the amount of such charges when received by it, to said Pacific Company, as fixed and determined by Railroad Company's tariffs monthly in due and ordinary course of business, so that the Pacific Company will receive out of the collections for current business the monthly earnings as returned to and received by the Railroad Company, either from connecting carriers or any other source, the intention being that the said charges as specified in the tariffs, shall be the property of said Pacific Company, the same to be collected for it by the Railroad Company, and paid over to it by the Railroad Company when received by it, as the property of said Pacific Company.

SECTION 3. That it will, to the extent of its requirements as to manufactured ice, take and receive from the Pacific Company all the ice which it may require for its use as a common carrier, either in respect to its stations, passenger trains or freight trains other than that required in the icing and refrigeration business hereinbefore referred to, and will pay to the Pacific Company for all ice so furnished to it, not exceeding the cost of producing said ice, plus ten per cent upon such cost, and will take and receive all such ice at the regular ice manufacturing or ice storage plants maintained and operated by the Pacific Company upon said Railroad Company's lines of railroad, and will pay for the same upon monthly bills therefor to be rendered by the Pacific Company, on or before twenty days after the receipt of such monthly bills, but Railroad Company may, at its
5680 option, procure and store at any points such natural ice as it may elect to put in storage for its use, provided the Pacific Company cannot furnish at same cost.

ARTICLE III.

It is mutually understood and agreed, by and between the parties hereto, as follows:

SECTION 1. That the rules for the distribution of refrigerator and ventilating cars furnished by the Pacific Company for use upon the

lines of Railroad of the Railroad Company to shippers and consignors for icing, shall be adopted with respect to and in conformity with the requirements of law, and that the distribution and placing of said cars for loading and unloading, and the movement of the same for cooling, icing, refrigeration, ventilation and other purposes, and for the ventilation of cars in transit, shall all be done in pursuance to lawful rules and regulations prescribed by competent authority, but under the direction and control of the Railroad Company cooperating with the Pacific Company for mutual benefit and economy; and that said distribution of cars to shippers and for use of shippers for the carriage of their goods over the lines of Railroad Company, and to the destination of such goods as prescribed by the bills of lading or as directed by diverting orders of shippers or consignors, shall be done without any unjust discrimination against or any undue favor to any shipper of any such goods.

SECTION 2. Preference shall always be given in supplying refrigerator or ventilating cars of the Pacific Company to shippers whose
5681 goods require refrigeration or ventilation as against any goods which may be moved without refrigeration or ventilation.

SECTION 3. In the performance of the services in respect to refrigeration and ventilation, the lawful directions and orders of the carrier upon whose tracks the cars are at the time the necessary work is done, shall be strictly and promptly obeyed, and in all cases the distribution of cars for any use by shippers shall at all times be under the direction and control of the Railroad Company, but in co-operation with the Pacific Company, subject to the lawful rules and regulations promulgated by law or prescribed by the tariffs of the carriers in force at the time of the carriage of such goods.

SECTION 4. Both parties hereto will co-operate to promote mutual economy, not impairing the reasonable and just demands of the public, or the economic, prompt and mutual service to shippers and consignees or consignors requiring the use of such cars, and from time to time efforts will be made by each of the parties to fully and completely serve the demands of the traffic in respect of receiving, forwarding preserving and properly caring for the safe and prompt transportation of all fruits, vegetables and perishable goods to be transported over Railroad Company's lines of railroad. Necessary reports and useful information concerning the business involved shall be duly interchanged by the officers of the Railroad Company and the officers of the Pacific Company.

SECTION 5. Railroad company shall have the right to use said cars of Pacific Company when upon its lines of railroad, for loading and carrying any freight which will not injure said cars, provided
5682 such use will not unreasonably delay such cars, nor divert them from the use of shippers whose commodities require refrigeration or ventilation, it being understood that said cars of the Pacific Company are furnished directly for the transportation and care of deciduous and citrus fruits, vegetables and other perishable commodities, and that it is the duty of the parties hereto to use such cars in that sort of service in preference to any other.

SECTION 6. The Pacific Company shall be bound to and will furnish all ice, refrigeration, ventilation and other service, including supervision for the use and benefit of any other cars which require such service which may be transported over Railroad Company's lines, without discrimination, preference, favor or advantage to the cars furnished or goods carried in cars of the Pacific Company.

SECTION 7. The Pacific Company shall be responsible to and indemnify Railroad Company for all just and reasonable damage arising from defective or insufficient refrigeration or ventilation, which the railroad shall pay to owners of the perishable goods carried in the cars of the Pacific Company and whose efficient refrigeration and ventilation is by this instrument undertaken by the Pacific Company; provided the Pacific Company shall have been given the opportunity to investigate the complaint so as to determine its responsibility for the alleged damage previous to the payment therefor. In the event of a denial of responsibility for the alleged damage by the Pacific Company, and the affirmation of said responsibility by the Railroad Company, the matter shall be determined by arbitration of
5683 three persons, one of whom shall be chosen by the Pacific Company and one by the Railroad Company, and the two so chosen to elect the third person: The decision of two of the arbitrators so chosen shall be conclusive.

SECTION 8. The Railroad Company shall pay the Pacific Company for the use of said cars a mileage rental of three-quarters of a cent (¾¢) per car per mile.

SECTION 9. The Railroad Company shall furnish such free transportation over its lines to employés of the Pacific Company when traveling on the business provided for by this contract and in which the railroad is interested, as shall be requested by the general manager of the Pacific Company and approved by the Railroad Company, and such free telegraph service over the wires of the Railroad Company as may be necessary to properly conduct the business covered by this agreement and as such business may from time to time require.

SECTION 10. This agreement shall take effect March 1st, 1908, and continue in force and effect for three years, to March 1, 1911, and thereafter until terminated by either party hereto giving to the other party twelve months' written notice of the intention to terminate same, but such termination shall not relieve either party hereto from any liability which may have attached at or before such termination, or from any obligation or indemnity herein contained.

SECTION 11. It is hereby agreed that in the event of the exercise of the option to cancel this contract by the party of the first
5684 part, said party of the first part shall purchase from the party of the second part all the buildings, machinery, appliances, apparatus of every sort, constructed, purchased and placed by the party of the second part along the line of the party of the first part for the purpose of carrying out this contract, at the cost price thereof, less such amount for depreciation thereof as may be agreed

upon by the parties hereto, or if they cannot agree upon the same by a third person to be selected by them as arbitrator.

In witness whereof the parties hereto have caused this agreement to be executed by its proper officers.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD CO.,
By (Signed) R. E. WELLS, *General Manager.*
Attest.
(Signed) W. H. COMESTOCK, *Secy.*

PACIFIC FRUIT EXPRESS COMPANY,
By (Signed) C. M. SECRIST,
General Manager.

(Copy.)

5685 [Pamphlet marked Complainant's Exhibit 205.]

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 205, being a copy of the Articles of Association of the Union Pacific Railroad Company, with all amendments to date.

Complainant's Exhibit 205 is as follows:

ON COVER: COMPLAINANT'S EXHIBIT 205.

ARTICLES OF ASSOCIATION
OF
UNION PACIFIC RAILROAD COMPANY

Original, filed July 1, 1897.

First Amendment, filed January 10, 1899.
Second Amendment, filed October 9, 1899.
Third Amendment, filed March 23, 1901.
Fourth Amendment, filed May 9, 1905.
Fifth Amendment, filed June 24, 1907.

ARTICLES OF ASSOCIATION
OF
UNION PACIFIC RAILROAD COMPANY

STATE OF UTAH,
County of Salt Lake, } *ss:*

Know all men by these presents, that we, the undersigned, whose names are hereunto subscribed, do hereby certify and
5686 declare that we have, under and in pursuance of an Act of the legislature of the State of Utah, entitled "An Act to provide for the formation of railroad corporations for the purpose of purchasing, owning, maintaining, operating and extending railroad lines, franchises, properties and appurtenances, authorizing the issue of bonds, making deeds of trust and mortgages, and defining the rights and powers of such corporations," and approved January 22, 1897, associated ourselves together, as a corporation, for the purpose of buying, owning, maintaining, operating and further extending the

railroads, rights, property and franchises hereafter in these articles described, and we further certify and declare that we have adopted, and do hereby adopt, the following

ARTICLES OF ASSOCIATION.

ARTICLE 1. The corporate name of the corporation hereby formed shall be "Union Pacific Railroad Company." By that name the persons subscribing these Articles of Association, and all persons who may from time to time become shareholders in the corporation hereby formed, shall have perpetual succession, with power to adopt a common seal, to sue and be sued, to acquire and hold and convey property, to make contracts, fix and prescribe tariffs and rates of compensation for the carriage of persons and property, and generally to do all acts necessary or proper to carry into effect the powers and purposes of said corporation.

5687 ARTICLE 2. Said corporation shall continue in existence for the period of fifty years from the date of the filing of these articles of association in the office of the Secretary of State of the State of Utah.

ARTICLE 3. Said corporation shall possess all of the powers, rights and franchises specified, referred to or provided for, in these Articles of Association, and also all of the powers which by said Act above entitled, approved January 22, 1897, corporations formed under and pursuant to the said Act are entitled to have, possess and enjoy, as fully as if all of the provisions of the said Act in this behalf were herein set forth at large, and also all the powers, rights, privileges and franchises of railroad corporations organized under the laws of the State of Utah, or under the laws of other States or Territories of the United States, as hereinafter provided.

ARTICLE 4. The amount of the capital stock of the said corporation shall be one hundred and thirty-six million dollars ($136,000,000), which shall be divided into and represented by one million three hundred and sixty thousand (1,360,000) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such capital stock, seven hundred and fifty thousand (750,000) shares of one hundred dollars ($100) each may be issued as preferred stock, and six hundred and ten thousand (610,000) shares of one hundred dollars ($100) each may be issued as common stock.

5688 Such preferred stock shall be entitled, in preference and priority over the common stock of said corporation, to dividends in each and every fiscal year, at such rate, not exceeding 4 per cent per annum, payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative, and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provision of this article.

ARTICLE 5. The number of directors to manage and control the affairs of this Corporation shall be fifteen, and the names and residences of those who shall serve as directors for the first year, and until their successors are chosen and qualified, are:

Edward Dickinson	Omaha, Nebr.
Joseph H. Millard	Omaha, Nebr.
John A. Munroe	Omaha, Nebr.
Thomas M. Orr	Omaha, Nebr.
George Q. Cannon	Salt Lake City, Utah.
Le Grand Young	Salt Lake City, Utah.
Alexander Millar	Boston, Mass.
James G. Harris	Boston, Mass.
Otto H. Kahn	New York City, N. Y.
Henry C. Deming	New York City, N. Y.
Alvin W. Krech	New York City, N. Y.
Felix M. Warburg	New York City, N. Y.
Ernest R. Adee	New York City, N. Y.
George H. Squire	New York City, N. Y.
Lawrence Greer	New York City, N. Y.

5689 ARTICLE 6. The said corporation is organized and formed for, and shall have the power, to purchase, own, hold, enjoy, maintain, operate and further extend the railroad, property, rights and franchises, or any part thereof, belonging to The Union Pacific Railway Company, a corporation formed by Articles of Union and Consolidation between The Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, which Articles of Union and Consolidation bear date January 24, 1880, and were filed in the Department of the Interior of the United States at Washington, in the District of Columbia, on or about January 26, 1880.

The said corporation hereby formed shall have the power to acquire, possess and enjoy the lands and land grants, or any part thereof, and all rights with respect thereto, of the said The Union Pacific Railway Company or any or either of its constituent companies; and the said corporation hereby formed shall have power to construct or acquire by lease, purchase, consolidation, ownership of capital stock, or otherwise, branches, extensions and connecting or auxiliary lines, within or without this State, as the Board of Directors may from time to time deem expedient, and as may be authorized by law.

The termini of the said railroad which the said corporation hereby formed is authorized to acquire, enjoy and operate, as now constructed, and the States and counties through which the said railroad passes, are as follows, to wit:

Said railroad extends from a point about five miles west of
5690 Ogden, in the County of Weber, in the State of Utah, easterly through said county and said city of Ogden therein, and through the Counties of Davis, Morgan and Summit, in said State of Utah, and the Counties of Uintah, Sweetwater, Carbon, Albany, and Laramie, in the State of Wyoming; and through the County of Sedgwick, in the State of Colorado, and through the counties of Kimball, Cheyenne, Deuel, Keith, Lincoln, Dawson, Buffalo, Hall, Merrick, Platte, Colfax, Dodge, Sarpy and Douglas, in the State of Nebraska, to Council Bluffs, in the County of Pottawattamie, in the State of

Iowa; and from Cheyenne, in the County of Laramie, in the State of Wyoming, southerly through said county and the Counties of Weld and Arapahoe, in the State of Colorado, to Denver, in said last-mentioned county and State; and from said Denver easterly through the Counties of Arapahoe, Elbert, Lincoln and Cheyenne, in the State of Colorado, and the Counties of Wallace, Logan, Gove, Trego, Ellis, Russell, Ellsworth, Saline, Dickinson, Geary, Riley, Pottawatomie, Shawnee, Jefferson, Douglas, Leavenworth and Wyandotte, in the State of Kansas, to Kansas City, in the County of Jackson, in the State of Missouri; the said railroad above described being the railroad which by said Articles of Union and Consolidation, dated January 24, 188 became the railroad and property of said The Union Pacific Railway Company.

Together with such branches and extensions of said railroad or railroads, or any part thereof, as the company hereby formed may from time to time be authorized by law to construct, operate, acquire and maintain.

5691 ARTICLE 7. The corporation hereby formed shall be vested with, and entitled to exercise and enjoy, all the powers, rights, privileges and franchises which at the time of the acquisition of the said railroads by the corporation hereby formed, or at the time of the sale thereof, under judicial proceedings, or in the enforcement of mortgage or other liens, or at private sale, belonged to or were vested in The Union Pacific Railway Company or in the corporation or corporations last owning the said railroads and properties, as well as all the rights, privileges and franchises of railroad corporations organized under the laws of the State of Utah, including the aforesaid recited Act of the legislature of the State of Utah, approved January 22, 1897; and said corporation shall also possess in each State or Territory, as respects its railroads or any branches or extensions thereof situate therein, all of the powers, rights, privileges and franchises of railroad corporations organized under the laws of such State or Territory, or of the United States.

ARTICLE 8. The corporation hereby formed may construct or acquire by lease, purchase, consolidation, ownership of capital stock, or otherwise, branches, extensions and connecting lines, within or without this State; and for such purposes, or any of them, may from time to time create and issue its stock, common or preferred, or both, and execute bonds and mortgages, for such sum or sums, and payable at such times and places, and drawing such rate of interest, as the directors may deem proper; and may use such stock and bonds, or any part thereof, in payment of property to be purchased by

5692 such corporation, or the improvement or extension thereof, upon such terms as the directors may deem expedient; may guarantee the bonds or obligations of extension, branch, connecting or auxiliary lines of railroad; and, in exercising its corporate powers, it may make such leases, purchases, contracts, conveyances and consolidations, and do such acts, as the directors may deem necessary or expedient, not inconsistent with these Articles or with the Constitution and laws of the State of Utah. The company hereby formed

may also consolidate with, or merge itself, into any other railway company or companies in this or other States or Territories, pursuant to law. It may also from time to time amend these Articles of Association, by filing amended Articles of Association, increasing the capital stock, or otherwise, agreeably with law, enlarging or changing the powers of the corporation hereby formed.

ARTICLE 9. The Board of Directors of said corporation may from time to time adopt and change by-laws not inconsistent with the provisions of these Articles or the Constitution and laws of the State of Utah. Said by-laws shall provide for annual elections of directors by the stockholders, and for the election by the directors of a President and Vice-President, and for the election or appointment of such other officers as shall be prescribed in such by-laws. Shareholders' or other corporate meetings may be held at such place or places in the United States as the by-laws may prescribe.

ARTICLE 10. Stockholders shall not be individually liable for the debts of the corporation.

5693 This corporation does not assume, and shall not be liable for the debts, obligations, or liabilities of The Union Pacific Railway Company, or of any corporation or company whose powers, rights, privileges, railroads, and franchises it shall purchase or acquire.

In testimony whereof, we have hereunto subscribed our names this 23rd day of June, 1897.

EDWARD DICKINSON,
OTTO H. KAHN,
H. C. DEMING,
ALVIN W. KRECH,
FELIX M. WARBURG,
E. R. ADEE,
GEO. H. SQUIRE,
LAWRENCE GREER,
ALEXANDER MILLAR,
JAMES G. HARRIS.

STATE OF NEW YORK,
City and County of New York, } ss:

On this twenty-third day of June, 1897, before me, the undersigned notary public, personally appeared Edward Dickinson, Otto H. Kahn, Henry C. Deming, Alvin W. Krech, Felix M. Warburg, Ernest R. Adee, George H. Squire, and Lawrence Greer, to me known, and known to me to be the identical persons named and described in and who subscribed the foregoing instrument, and they acknowledged to me that they signed the foregoing articles of association for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.]

GEO. V. TURNER,
Notary Public,
N. Y. Co. No. 44.

5694 COMMONWEALTH OF MASSACHUSETTS, }
County of Suffolk. } *ss:*

On this 24th day of June, 1897, before me, the undersigned, a notary public, personally appeared Alexander Millar and James G. Harris, to me known, and known to me to be the identical persons named and described in and who subscribed the foregoing instrument, and they acknowledged to me that they signed the foregoing articles of association for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.] JOHN H. APPLETON,
Notary Public.

(CERTIFICATE OF SECRETARY OF STATE.)

STATE OF UTAH.
Office of
SECRETARY OF STATE.

To Union Pacific Railroad Company.

I, James T. Hammond, Secretary of State of the State of Utah, do hereby certify that on the first day of July, 1897, was filed in my office, the articles of association of the said Association, that said articles contain the statement of facts required by law, and that said Corporation is hereby constituted a body corporate, with right of succession as specified in its said articles of agreement, and is hereby authorized to exercise all the functions, enjoy all the privileges of a Corporation, and to transact all business of said Corporation,
5695 as specified in its said articles of association.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of said State at Salt Lake City, this First day of July, A. D. 1897.

[SEAL OF UTAH.] JAMES T. HAMMOND,
Secretary of State.

(First Amendment, Filed January 10, 1899.)

AMENDMENT TO ARTICLES OF ASSOCIATION
OF
UNION PACIFIC RAILROAD COMPANY.

STATE OF UTAH, }
County of Salt Lake. } *ss:*

Know all men by these presents, that Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby, for the purpose of increasing its common capital stock by the amount of $27,460,100, amend its Articles of Association by substituting as Article 4 thereof, and in the place of said Article as originally and heretofore existing, the following:

"ARTICLE 4. The amount of the capital stock of the said corporation shall be one hundred and sixty-three million four hundred and sixty thousand one hundred dollars ($163,460,100), which shall be divided into and represented by one million six hundred and thirty-four thousand six hundred and one (1,634,601) shares of the
5696 par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such capital stock, seven hundred and fifty thousand (750,000) shares of one hundred dollars ($100) each may be issued as preferred stock, and eight hundred and eighty-four thousand six hundred and one (884,601) shares of one hundred dollars ($100) each may be issued as common stock.

Such preferred stock shall be entitled, in preference and priority over the common stock of said corporation, to dividends in each and every fiscal year, at such rate, not exceeding four per cent. per annum, payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative, and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provisions of this article."

Dated January 10, 1899.

[SEAL.]

HORACE G. BURT,
President of Union Pacific Railroad Company.
ALEX. MILLAR,
Secretary of Union Pacific Railroad Company.

Attest:

ALEX. MILLAR,
Secretary of Union Pacific Railroad Company.

5697 (Second Amendment, filed October 9, 1899.)

AMENDMENT TO ARTICLES OF ASSOCIATION
OF
UNION PACIFIC RAILROAD COMPANY.

STATE OF UTAH,
County of Salt Lake. } *ss.*

Know all men by these presents, that Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby, for the purpose of increasing its preferred capital stock by the amount of $25,000,000, and its common capital stock by the amount of $7,718,600, amend its Articles of Association by substituting as Article 4 thereof, and in the place of said Article as amended and heretofore existing, the following:

"ARTICLE 4. The amount of the capital stock of the said corporation shall be one hundred and ninety-six million one hundred and seventy-eight thousand seven hundred dollars ($196,178,700), which shall be divided into and represented by one million nine hundred

and sixty-one thousand seven hundred and eighty-seven (1,961,787) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such capital stock, one million (1,000,000) shares of one hundred dollars ($100) each may be issued as preferred stock, and nine hundred and sixty-one thousand seven hundred and eighty-seven
5698 (961,787) shares of one hundred dollars ($100) each may be issued as common stock.

Such preferred stock shall be entitled, in preference and priority over the common stock of said corporation, to dividends in each and every fiscal year, at such rate, not exceeding four per cent per annum, payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative, and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provisions of this article."

Dated October 9, 1899.

[SEAL.] HORACE G. BURT,
President of Union Pacific Railroad Company.
ALEX. MILLAR,
Secretary of Union Pacific Railroad Company.

Attest:
ALEX. MILLAR,
Secretary of Union Pacific Railroad Company.

5699 (Third Amendment filed March 23, 1901.)

AMENDMENT TO ARTICLES OF ASSOCIATION
OF
UNION PACIFIC RAILROAD COMPANY.

STATE OF UTAH, }
County of Salt Lake, } *ss:*

Know all men by these presents, that Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby, for the purpose of increasing its common capital stock by the amount of one hundred million dollars ($100,000,000), amend its Articles of Association by substituting as Article 4 thereof, and in the place of said Article as originally and heretofore existing, the following:

"ARTICLE 4. The amount of the capital stock of the said corporation shall be two hundred and ninety-six million one hundred and seventy-eight thousand seven hundred dollars ($296,178,700), which shall be divided into and represented by two million nine hundred and sixty-one thousand seven hundred and eighty-seven (2,961,787) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such capital stock, one million (1,000,000) shares of one hundred dollars ($100) each may be issued as preferred stock, and one million nine hundred and sixty-one thousand seven hundred
5700 and eighty-seven (1,961,787) shares of one hundred dollars ($100) each may be issued as common stock.

Such preferred stock shall be entitled, in preference and priority over the common stock of said corporation, to dividends in each and every fiscal year, at such rate, not exceeding four per cent. per annum, payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative, and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provisions of this article."

Dated March 23, 1901.

[SEAL]

HORACE G. BURT,
President of Union Pacific Railroad Company.
ALEX. MILLAR,
Secretary of Union Pacific Railroad Company.

Attest:

ALEX. MILLAR,
Secretary of Union Pacific Railroad Company.

5701 (Fourth Amendment, Filed May 9, 1905.)

AMENDMENT TO ARTICLES OF ASSOCIATION
OF
UNION PACIFIC RAILROAD COMPANY.

STATE OF UTAH,
County of Salt Lake, } ss.:

Know all men by these presents, that Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby, for the purpose of increasing its preferred stock by the amount of one hundred million dollars ($100,000,000), amend its Articles of Incorporation by substituting as Article 4 thereof, and in the place of said Article as amended and heretofore existing, the following:

"ARTICLE 4. The amount of the capital stock of the said corporation shall be three hundred and ninety-six million one hundred and seventy-eight thousand seven hundred dollars ($396,178,700), which shall be divided into and represented by three million nine hundred and sixty-one thousand seven hundred and eighty-seven (3,961,787) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such capital stock, two million (2,000,000) shares of the par value of one hundred dollars ($100) each may be issued as preferred stock, and one million nine hundred and sixty-one thousand seven

hundred and eighty-seven (1,961,787) shares of the par value
5702 of one hundred dollars ($100) each may be issued as common stock.

Such preferred stock shall be entitled, in preference and priority over the common stock of said corporation, to dividends in each and every fiscal year, at such rate, not exceeding four per cent (4%) per annum, payable out of the net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative, and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provisions of this article."

Dated the fifth day of May, nineteen hundred and five.

[SEAL] E. H. HARRIMAN,
President of Union Pacific Railroad Company.

ALEX. MILLAR,
Secretary of Union Pacific Railroad Company.

Attest:
ALEX. MILLAR,
Secretary of Union Pacific Railroad Company.

5703 (Fifth Amendment, Filed June 24, 1907.)

AMENDMENT TO ARTICLES OF ASSOCIATION

OF

UNION PACIFIC RAILROAD COMPANY.

STATE OF UTAH,
County of Salt Lake, } *ss:*

Know all men by these presents, that Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby, for the purpose of increasing its common capital stock by the amount of one hundred million dollars ($100,000,000), amend its Articles of Incorporation by substituting as Article 4 thereof, and in the place of said Article as amended and heretofore existing, the following:

"ARTICLE 4. The amount of the capital stock of the said corporation shall be four hundred and ninety-six million one hundred and seventy-eight thousand seven hundred dollars ($496,178,700), which shall be divided into and represented by four million nine hundred and sixty-one thousand seven hundred and eighty-seven (4,961,787) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such capital stock, two million (2,000,000) shares of the par value of one hundred dollars ($100) each may be issued as preferred stock, and two million nine hundred and sixty-one thousand seven hundred and eighty-seven (2,961,787) shares of the par value

5704 of one hundred dollars ($100) each may be issued as common stock.

Such preferred stock shall be entitled, in preference and priority over the common stock of said corporation, to dividends in each and every fiscal year, at such rate, not exceeding four per cent (4%) per annum, payable out of the net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative, and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provisions of this article."

Dated the fifteenth day of June, nineteen hundred and seven.

E. H. HARRIMAN,
[SEAL] *President of Union Pacific Railroad Company.*

ALEX. MILLAR,
Secretary of Union Pacific Railroad Company.

Attest:

ALEX. MILLAR,
Secretary of Union Pacific Railroad Company.

5705 (Pamphlet marked Complainant's Exhibit 206.)

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 206, being the Articles of Incorporation of the Oregon Short Line Railroad Company, with the only amendment thereto to date.

Complainant's Exhibit 206 is as follows:

COMPLAINANT'S EXHIBIT 206.

ARTICLES OF INCORPORATION
OF THE
OREGON SHORT LINE RAILROAD COMPANY.

Filed February 9, 1897.
Amendment Filed October 18, 1902.

STATE OF UTAH,
City and County of Salt Lake, } *ss:*

We, the undersigned, do here certify and declare that we have this first day of February, A. D. 1897, under and in pursuance of an Act of the Legislature of the State of Utah entitled "An Act to provide for the formation of railroad corporations for the purpose of purchasing, owning, maintaining, operating and extending railroad lines, franchises, properties and appurtenances; authorizing the issue of bonds, making deeds of trust and mortgages, and defining the rights and powers of such corporations," and approved January 22, A. D. 1897, associated ourselves together as a corporation for the pur-

5706 pose of buying, owning, maintaining and further extending the railroads, rights, property and franchises hereinafter in these Articles described, and we further certify and declare that we have adopted the following

ARTICLES OF ASSOCIATION.

ARTICLE 1. The corporate name of this association shall be the

"OREGON SHORT LINE RAILROAD COMPANY."

ARTICLE 2. The said Company shall continue in existence for the period of fifty (50) years from the filing of these Articles of Association in the Office of the Secretary of State.

ARTICLE 3. The amount of capital stock shall be sixty million (60,000,000) dollars, which shall be divided into and represented by six hundred thousand (600,000) shares of one hundred (100) dollars each.

ARTICLE 4. The number of directors to manage and control the affairs of this association shall be fifteen (15). The names and residences of the first fifteen (15) directors are as follows, to wit:

Names.	Residences.
Oliver Ames	Easton, Massachusetts.
E. Ellery Anderson	New York City, New York.
Gordon Abbott	Boston, Massachusetts.
Samuel Carr	Boston, Massachusetts.
T. Jefferson Coolidge, Jr	Manchester, Massachusetts.
5707 Charles H. Coster	Tuxedo, New York.
Thomas R. Jones	Salt Lake City, Utah.
Gardiner M. Lane	Cambridge, Massachusetts.
Oliver W. Mink	Brookline, Massachusetts.
Henry G. Nichols	Boston, Massachusetts.
Walter G. Oakman	New York City, New York.
Alexander E. Orr	Brooklyn, New York.
Nathaniel Thayer	Lancaster, Massachusetts.
Francis S. Bangs	New York City, New York.
William E. Glyn	New York City, New York.

ARTICLE 5. The purpose for which this Corporation is organized is to buy, own, maintain, operate and further extend the railroad rights, property and franchises formerly belonging to the Oregon Short Line and Utah Northern Railway Company, and to construct or acquire, by lease, purchase, consolidation, ownership of capital stock or otherwise, branches, extensions and connecting lines within or without this State, as the directors of this Corporation may from time to time deem expedient and as may be authorized by law. The termini of the said railroad as now constructed, and the States and Counties through which it passes, are as follows, to wit:

All that line of railroad (formerly known as the Oregon Short Line Railway) beginning at a point called Granger, at a junction with the line of the Union Pacific Railway Company in Sweetwater County, in the State of Wyoming, and running thence in a
5708 general westerly and northwesterly direction into and through the County of Uintah, in Wyoming, and to the western boundary of the State of Wyoming, and thence into the State of Idaho, and through or partly through the counties of Bear Lake, Bannock, Oneida, Blaine, Lincoln, Elmore, Ada and Canyon to the western boundary of the State of Idaho, and thence into the County of Malheur, in the State of Oregon, and thence again into the said County of Canyon, in the State of Idaho, and through said County

of Canyon into and through the County of Washington, in the State of Idaho, to the western boundary of the State of Idaho, and thence into the County of Baker, in the State of Oregon, and terminating at a junction with the lines of the Oregon Railroad and Navigation Company at or near a place called Huntington, in the said County of Baker and State of Oregon, including the branch extending from the above-described line at a point called Shoshone, in the County of Lincoln and State of Idaho, in a general northerly direction to Ketchum, in the County of Blaine, in the State of Idaho.

Length of above-described lines, 611.81 miles.

Also all that line of railroad (formerly known as the Idaho Central Railway) beginning at or near a place called Nampa, in the County of Canyon and State of Idaho, at a junction with the above-described main line, and running thence in a general northerly and easterly direction to a point at or near Boise City, in Ada County, in the State of Idaho.

Length of line 16.42 miles.

Also all that line of railroad (formerly known as the Utah and Northern Railway) beginning at a place called Ogden,
5709 in the County of Weber, in the State of Utah, and extending thence in a general northerly direction through, or partly through, the counties of Weber, Box Elder and Cache to the northern limit of the State of Utah, and thence into the State of Idaho, through the counties of Oneida, Bannock, Bingham and Fremont, in the State of Idaho, by way of McCammon and Pocatello to the boundary of the State of Idaho and into the State of Montana, and thence through, or partly through, the counties of Madison, Beaver Head and Silver Bow, in the State of Montana, to Silver Bow Junction and Butte, in said County of Silver Bow, in the State of Montana, and in a westerly and northerly direction from Silver Bow Junction into and partly through Deer Lodge County, in the State of Montana, to Stuart, in said county: also in a general northerly direction from said Stuart to a junction with the Northern Pacific Railway at Garrison, in said Deer Lodge County, in the State of Montana, including the branch from a point on the above-described line of railroad known as Cache Junction, in Cache County, State of Utah, extending in a general easterly and northerly direction to Preston, in Oneida County, in the State of Idaho.

Length of above described lines (excluding line between McCammon and Pocatello, 22.81 miles, included above in mileage of Oregon Short Line Railway between Granger and Huntington) 466.40 miles.

Also all that line of railroad (formerly known as the Utah Central Railroad), commencing at or near the City of Ogden, in the County of Weber, State of Utah, and running thence in a general
5710 southerly direction through, or partly through, Weber and Davis Counties, in the State of Utah, to Salt Lake City, in the County of Salt Lake and State of Utah.

Length of line, 36.34 miles.

Also all that line of railroad (formerly known as the Ogden and Syracuse Railway) extending from the last above described line from a point called Syracuse Junction, in the County of Davis, in the State of Utah, westerly to a point called Syracuse, situated on Great Salt Lake, in said County of Davis and State of Utah.

Length of line, 5.85 miles.

Also all that line of railroad (formerly known as the Utah and Nevada Railway) beginning at or near the city of Salt Lake, in the County of Salt Lake and State of Utah, and extending in a general westerly and southerly direction to a point called Terminus, in the County of Tooele and State of Utah, together with the branch extending from Saltair Junction to Saltair on Great Salt Lake, in the County of Salt Lake and State of Utah.

Length of line (narrow gauge), 39.74 miles.

Also all that line of railroad (formerly known as the Utah Southern Railroad) beginning at or near Salt Lake City, in the County of Salt Lake, in the State of Utah, and running thence in a general southerly direction through, or partly through, the counties of Salt Lake, Utah and Juab, and terminating at or near a place called Juab, in the County of Juab, and at a junction with the hereinafter described line of railroad extending in a southerly direction from said Juab.

Length of line, 102.35 miles.

5711 Also all that line of railroad (formerly known as the Salt Lake and Western Railway) beginning at or near a point called Lehi Junction, at a junction with the last above described line of railroad, and extending thence in a general southerly and westerly direction through, or partly through, the counties of Utah, Tooele and Juab to a point called Tintic, in the County of Juab and State of Utah, together with the branches extending from such line from Ironton to Silver City Junction, Mammoth Junction and Eureka, from Silver City Junction to Northern Spy Mine, and from Mammoth Junction to Mammoth, all in the county of Juab and State of Utah.

Length of above described lines, 65.39 miles.

Also all that line of railroad (formerly known as the Utah Southern Railroad Extension) beginning at or near a point called Juab, at a junction with one of the above-described lines of railroad (formerly known as the Utah Southern Railroad), and extending in a general southerly and westerly direction through, or partly through, the counties of Juab, Millard and Beaver to Frisco, in the County of Beaver, in the State of Utah.

Length of line, 137.24 miles.

Together with such franchises and extensions of said railroad as this Company may from time to time be authorized by law to acquire, construct, operate and maintain.

ARTICLE 6. We, the undersigned, do hereby subscribe to the above Articles of Association, and each of us agrees to take the number of shares of the capital stock of the aforesaid Oregon Short Line

5712 Railroad Company set against his name, to be paid for in property to be acquired by the Company, or in cash, as stated against our respective names hereunder:

Name.	Residence.	No. of shares.
T. Jefferson Coolidge, Jr	Manchester, Mass	One (cash).
N. Thayer	Lancaster, Mass	One (cash).
A. E. Orr	Brooklyn, N. Y	One (cash).
W. E. Glyn	New York City	One (cash).
C. H. Coster	Tuxedo, N. Y	One (cash).
F. S. Bangs	New York City	One (cash).
Gardiner M. Lane	Cambridge, Mass	One (cash).
Oliver Ames	Easton, Mass	One (cash).
Walter G. Oakman	New York City	91,530 shares (property).
Samuel Carr	Boston, Mass	91,530 shares (property).
Henry G. Nichols	Boston, Mass	91,532 shares (property).

AMENDMENT TO ARTICLES OF ASSOCIATION

OF THE

OREGON SHORT LINE RAILROAD COMPANY.

STATE OF UTAH,
County of Salt Lake } ss.:

Know all men by these presents, that Oregon Short Line Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby amend its Articles of Association in the particulars as follows:

5713 It amends Article 5 of its said Articles of Association by adding thereto an additional section to be known as Section 2, in the following words:

"SECTION 2. This company shall also have power to construct or acquire by purchase, lease or otherwise, and to maintain and operate ferries, ferry boats, steamboats, steamships, and other vessels, docks, wharves, piers, warehouses and property appurtenant to the business of ferries or of navigation, and to engage generally in the business of transportation of persons and property upon the navigable waters of the United States, or of other countries and upon the high seas, and to purchase, own, hold or otherwise acquire shares of the capital stock, or the obligations, and to guarantee or secure the obligations of any company having power to engage in any such business, or engaged therein.

"It shall also have power to construct or acquire by lease, purchase, merger, consolidation, ownership of capital stock or otherwise, branches, extensions, cut-offs and connecting lines of railroad, terminal railroads and terminal facilities within or without this state, or partly within and partly without the same, and such other property either real or personal as the directors may deem desirable, and may make such contracts and do such acts as the directors shall deem necessary or expedient, provided such acts and contracts are not in violation of the Constitution or laws of the State of Utah; may purchase or otherwise acquire and hold, sell or otherwise dispose of the capital stock, or any part of the capital stock, and the bonds or obliga-

5714 tions, or any part thereof, or may guarantee the stocks, bonds or obligations of any other corporation owning, leasing or

operating, or owning, or holding the capital stock or any part of the capital stock of a corporation owning, leasing or operating railroad lines, terminals or terminal facilities which are or may be within this State or partly within and partly without the same, or wholly without this state, and may exercise, with respect to the stock so purchased or acquired and held, all the rights of individual owners thereof, including the right to vote thereon, and may also purchase or otherwise acquire the railroad, property and franchises, or any part thereof, of any corporation owning, leasing or operating railroad lines, terminals or terminal facilities within this state or partly within and partly without the same, or wholly without this state, which connect with the line of railroad of this company, either by means of actual union of track or through the medium of any bridge, ferry, or line of railroad leased, operated or otherwise controlled by either of said corporations, and in exercising its corporate powers it may make such leases, purchases, contracts, sales, conveyances, mergers and consolidations and do such acts as the Directors may deem necessary or expedient and not inconsistent with these Articles or with the Constitution and laws of the State of Utah. The Company shall have power to consolidate with or merge itself into any other railroad company or companies, and may sell, convey, transfer, let or lease its property and franchises, or any part thereof, to any corporation (not owning any competitive line of railroad in this State) whether organ-
5715 ized under the laws of this state or any other state or territory, or any Act of Congress.

"The Company shall have the power to create and issue capital stock to an amount not exceeding the amount authorized by and stated in these Articles of Association, or any amendment or amendments thereof, and from time to time to issue bonds for such sum or sums and payable at such times and places and drawing interest at such rates as the Directors may deem proper, and to execute trust deeds or mortgages, or both, upon any property, real or personal, owned by the company to secure the same, and may use such bonds or stock, or any part thereof, for any of its lawful corporate purposes upon such terms as the Directors may deem expedient.

"It may also from time to time amend these Articles of Association by filing amended Articles of Association, increasing its capital stock, or otherwise, agreeable with laws enlarging or changing the powers for which it was formed, and it shall also have and possess all of the powers and privileges conferred upon railroad corporations by Chapter 26 of the Laws of Utah of 1901, and any other law of the State of Utah relating to railroad corporations."

Dated, October 9, 1902.

OREGON SHORT LINE RAILROAD COMPANY,

{Corporate seal O. S. L. Rd.}

By E. H. HARRIMAN,
President.

ALEX. MILLAR,
Secretary, Oregon Short Line Railroad Company.

Attest:
ALEX. MILLAR, *Secretary.*

5716 (Pamphlet marked Complainant's Exhibit 207.)

Mr. SEVERANCE: I offer in evidence Complainant's Exhibit 207, being the Articles of Incorporation of the Oregon Railroad & Navigation Company, together with all amendments to date.

Complainant's Exhibit 207 is as follows:

COMPLAINANT'S EXHIBIT 207.

ARTICLES OF INCORPORATION
OF
THE OREGON RAILROAD AND NAVIGATION COMPANY.

Filed July 16, 1896.

Amendment Filed March 25, 1901.
Amendment Filed April 17, 1901.
Amendment Filed April 20, 1905.
Amendment Filed December 9, 1905.
Amendment Filed January 4, 1906.

Know all men by these presents, that we, the undersigned, Henry Failing, E. McNeill, and W. W. Cotton, all of Portland, Oregon, do hereby associate ourselves as a corporation under the General Incorporation Laws of the State of Oregon and do hereby adopt the following Articles of Incorporation:

5717

ARTICLE I.

The name of the corporation shall be The Oregon Railroad and Navigation Company.

ARTICLE II.

The duration of the corporation shall be perpetual.

ARTICLE III.

The business of the corporation shall be:

First. To acquire or construct and equip the following railroad and telegraph lines, namely: 1st. A line from Portland, in the State of Oregon, to Huntington, in said State. 2d. A line from Umatilla Junction, in the State of Oregon, via Wallula Junction, in the State of Washington, to Walla Walla, in the State of Washington. 3d. A line from Pendleton Junction, in the State of Oregon, via Walla Walla, to Spokane, in the State of Washington. 4th. A line from Willows Junction, in the State of Oregon, to Heppner, in said State. 5th. A line from Bolles Junction, in the State of Washington, to Dayton, in said State. 6th. A line from Walla Walla, in the State of Washington, to Dudley and Dixie, in said State. 7th. A line from

Connell Junction, in the State of Washington, via La Crosse Junction, in the State of Washington, to Moscow, in the State of Idaho. 8th. A line from Starbuck, in the State of Washington, to Pomeroy, in said State. 9th. A line from East Portland, in the State of Oregon, to Albina, in said State. 10th. A line from La Grande, in the State of Oregon, to Elgin, in said State. 11th. A line from Winona Junction, in the State of Washington, to Seltice, in said State.
5718 12th. A line from Tekoa, in the State of Washington, to Mullan, in the State of Idaho, with a branch from Wallace, in the State of Idaho, to Burke, in said State. 13th. A line from Lower Cascades, in the State of Washington, to Upper Cascades, in said State. 14th. A line from Portland, in the State of Oregon, via such route as may be selected by the Board of Directors of the corporation, to a point at or near the mouth of the Columbia River, on either the north or south side of said river. 15th. A line from Dayton, in the State of Washington, to a point at or near Delaney, in said State. 16th. A line from Moscow, in the State of Idaho, towards or to Lewiston, in said State. 17th. A line from a point at or near Biggs Station, in the State of Oregon, towards or to Prineville, in said State. 18th. A line from Elgin, in the State of Oregon, towards or to Wallowa, in said State, and to acquire, in any lawful manner, all or any part of the railroads, steamboats, steamships and telegraph lines, and other property formerly or now owned by the Oregon Railway and Navigation Company, the Cascades Railroad Company, the Walla Walla and Columbia River Railroad Company, the Columbia and Palouse Railroad Company, the Oregon Railway Extensions Company, the Washington and Idaho Railroad Company, and the Mill Creek Flume and Manufacturing Company, or of either or any of said companies, or the stocks, bonds or other securities of either or any of said companies, and to maintain and operate such constructed or acquired railroad and telegraph lines and branches, and to carry freight and passengers thereon, and to receive tolls for the carriage of the same.

Second. To purchase or consolidate with, lease or other-
5719 wise acquire, or to operate and maintain, on such terms as may be agreed upon, any railroad or railroads in Oregon, Washington and Idaho, with its or their rolling stock, equipments and appurtenances, and to complete the same to its authorized terminus.

Third. To facilitate and to assist in the construction, building and extension, equipment and operation of any railroad line, steamship or steamboat line in Oregon, Washington or Idaho, or steamship line running from Portland, or any point on the Columbia River, to any other ports, and connecting or intending to connect or exchange traffic with the railroad, steamships or steamboats of this corporation, and for such purpose to subscribe for or purchase the stock or bonds of any company owing or operating any such railroad, steamships or steamboats, and to guarantee or otherwise secure the payment of any such bonds or the interest thereon by pledge or mortgage of the property of this corporation, or any part thereof, or

otherwise, and to consolidate with or to lease or contract for the operation and maintaining of any and all of such railroads, steamships or steamboat companies so aided.

Fourth. To build, purchase, own, lease or operate steamboats between the ports of Portland, Astoria, Victoria, Sitka, San Francisco, or any other ports in the Northern Pacific Ocean, and steamboats on the Columbia, Willamette and Snake Rivers, and also to build, purchase and own or lease docks, piers, warehouses, locks, ferry-boats, stages and other means of transportation in connection with the railroads, steamboats and steamships above mentioned.

5720 Fifth. To purchase or lease lands, whether adjacent or contiguous to its railroads, docks or warehouses or not; and to hold, possess, improve, lease, sell, mortgage, or otherwise dispose of such lands in such manner as may be deemed fit.

Sixth. To borrow money on bonds, notes or otherwise for the general purpose of the corporation, and to mortgage its railroads, steamships, steamboats, franchises, rolling stock and any and all property, to secure the payment thereof.

Seventh. To do all other things necessary or proper for the accomplishment of the objects above specified.

Article IV.

The principal office of the corporation shall be at Portland in the State of Oregon.

Article V.

The capital stock of the corporation shall be thirty-five millions of dollars, and the amount of each share of such capital stock shall be one hundred dollars. The capital stock of the corporation shall be divided into two classes, to-wit: 1st, preferred stock to the amount of eleven millions of dollars: 2d, common stock to the amount of twenty-four millions of dollars. The rights of the holders of such preferred stock and the holders of such common stock shall be as hereinafter stated, to-wit: The preferred stock shall be entitled in each calendar year to receive dividends, if declared, to the amount of four per cent per annum, non-cumulative, before any dividend shall be paid upon the common stock. The common stock

5721 shall be entitled, after the payment of four per cent. dividends to the preferred stock, to all dividends declared during the same year up to four per cent. per annum; and after the payment of such dividend to the common stock, all dividends declared during that year shall be distributed pro rata to the preferred and common stock. In case of the liquidation of the corporation, the holders of the preferred stock shall be entitled to receive the par amount of their stock out of the assets of the corporation in priority to the common stock.

The preferred stock shall not be increased without the consent of all the stockholders of the corporation.

ARTICLE VI.

No mortgage shall be put upon the property of the corporation, and no sale or lease of its railroad or telegraph line shall be made, without the approval of the holders of a majority of the preferred stock and a majority of the common stock, and the corporation shall not consolidate itself with or into any other corporation without like approval.

ARTICLE VII.

Henry Failing, E. McNeill, and W. W. Cotton, or any two of them, are hereby appointed to open stock books of the corporation, to receive subscriptions and organize the corporation.

ARTICLE VIII.

The Board of Directors of the Corporation shall consist of fifteen members.

In witness whereof, we have to these presents, executed in
5722 triplicate, set our hand and seals this 15th day of July, one thousand eight hundred and ninety-six.

HENRY FAILING. (SEAL.)
E. MCNEILL. (SEAL.)
W. W. COTTON. (SEAL.)

STATE OF OREGON,
County of Mutnomah. } *ss:*

Be it remembered, that on this 15th day of July, 1896, before me, the undersigned, a Notary Public in and for said county and State, personally appeared the within named, Henry Failing, E. McNeill and W. W. Cotton, personally known to me, and known to me to be the identical persons described in and who executed the foregoing Articles of Incorporation of The Oregon Railroad and Navigation Company, and acknowledged to me that they executed the same as their act and deed for the uses and purposes therein mentioned.

In witness whereof, I hereunto set my hand and notarial seal this 15th day of July, 1896.

[NOTARIAL SEAL.]

JOSEPH N. TEAL,
Notary Public for Oregon.

(Endorsed:)

3902. Articles of Incorporation of The Oregon Railroad & Navigation Company, filed for Record at nine o'clock a. m. the 16th day of July, 1896, and recorded on page 151 of Book 8 of Records of Articles of Incorporation of private corporations.

H. R. KINCAID,
Secretary of State.

5723 ADJOURNED REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE OREGON RAILROAD AND NAVIGATION COMPANY.

Pursuant to the by-laws, an adjourned regular meeting of the Board of Directors of The Oregon Railroad & Navigation Company was held at the office of the Company on March 25, 1901, at 3 o'clock P. M.

The following Directors were present: Messrs. Mohler, Corbett, Scott, Ladd, Mills, Crooks, Benson and Cotton.

On motion of Mr. Mills, seconded by Mr. Scott, the following resolution was put to vote and was adopted, receiving the votes of all the Directors present:

"*Resolved*, That this company desires to construct and build a branch line or extension of its main line from some suitable point on the east side of the Willamette River, in Portland, Multnomah County, Oregon, to St. Johns in said County and State, and to exercise in connection with such line the right of eminent domain, as provided by the laws of the State of Oregon;

Resolved, further, that said branch or extension be, and the same is, hereby adopted as a branch and extension of the line of this Company's railroad, and that the termini thereof shall be some suitable point on the main line of this Company's railroad in Portland, Multnomah County, Oregon, and some point in the town of St. Johns, in said County and State.

Resolved, further, that the Secretary of this Company be,
5724 and he is, hereby, authorized to certify under the seal of this Company, duplicate copies of this resolution and to cause one of said copies to be filed in the office of the Secretary of State of the State of Oregon and one in the office of the County Court clerk of Multnomah County, Oregon, and to do any other act necessary or proper for the purpose of complying with or obtaining the benefits of the Act of the Legislature of the State of Oregon, entitled: "An Act to provide for the method of the building of branch and side lines or extensions of railway companies." Approved February 27, 1901.

W. W. COTTON,
Secretary.

A. L. MOHLER,
President.

STATE OF OREGON,
County of Multnomah, } ss.:

I, W. W. Cotton, hereby certify that I am the Secretary of The Oregon Railroad and Navigation Company, and under the by-laws of said company as such secretary am custodian of the corporate seal of the same company and have in my care and keeping the corporate books and records of said Company; that the foregoing resolution is a true and correct copy of the proceedings had at the adjourned regular meeting of the Board of Directors of The Oregon Railroad and Navigation Company, held in Portland, on March 25, 1901, at 3 o'clock P. M.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of said Company, at Portland, Oregon, this 25th day of March, 1901.

(SEAL.) W. W. COTTON.
Secretary.

(10c I. R. Stamp Canceled.)

5725 (Endorsed:)

3902. Certified copy of a resolution of the Board of Directors of The Oregon Railroad and Navigation Company, adopting a line from Portland to St. Johns as a branch and extension of said company's railroad. Resolution passed March 25, 1901. Filed March 25, 1901. F. I. Dunbar, Secretary of State.

SUPPLEMENTARY ARTICLES OF INCORPORATION
OF
THE OREGON RAILROAD AND NAVIGATION COMPANY.

Whereas, at a special meeting of the stockholders of The Oregon Railroad and Navigation Company duly called and held at the office of said corporation in the City of Portland, Multnomah County, in the State of Oregon, on the first day of February, 1901, the following resolutions were by the vote of the holders of more than three-fourths of all of the capital stock of said corporation, and by the unanimous vote of all of the stock represented at the said meeting, adopted, namely:

"*Resolved*, That Article III. of the Articles of Incorporation of this Company which were filed July 16th, 1896, be amended by inserting after the words '18th. A line from Elgin, in the State of Oregon, towards or to Wallowa, in said State' in the first paragraph of said Articles the following words, to-wit:

"'19th. A line from Fairfield, in the State of Washington,
5726 to Waverly in said State. 20th. A line from Portland, in the State of Oregon, to St. Johns, in said State. 21st. A line from a point near Wardner, in the State of Idaho, to the Sierra Nevada Mine, at or near the head of Deadwood Gulch, in said State.'

"*Resolved*, that the President and Secretary and the Directors of this Company be and they are hereby instructed and directed for and on behalf of this Company to prepare and execute in the name of and under the corporate seal of this Company, and in their own names, Supplementary Articles of Incorporation amending said Article III. of the Articles of Incorporation of this Company as aforesaid so that said Article shall hereafter read as follows:

"'ARTICLE III.

"'The business of the corporation shall be—

"'First. To acquire or construct and equip the following railroad and telegraph lines, namely: 1st. A line from Portland, in the State

of Oregon, to Huntington, in said State. 2d. A line from Umatilla Junction, in the State of Oregon, via Wallula Junction, in the State of Washington, to Walla Walla, in the State of Washington. 3rd. A line from Pendleton Junction, in the State of Oregon, via Walla Walla, to Spokane, in the State of Washington. 4th. A line from Willows Junction, in the State of Oregon, to Heppner, in said State. 5th. A line from Bolles Junction, in the State of Washington, to Dayton, in said State. 6th. A line from Walla Walla, in the State of Washington, to Dudley and Dixie, in said State. 7th. A
5727 line from Connell Junction, in the State of Washington, via La Crosse Junction, in the State of Washington, to Moscow, in the State of Idaho. 8th. A line from Starbuck, in the State of Washington, to Pomeroy, in said State. 9th. A line from East Portland, in the State of Oregon, to Albina, in said State. 10th. A line from La Grande, in the State of Oregon, to Elgin, in said State. 11th. A line from Winona Junction, in the State of Washington, to Seltice, in said State. 12th. A line from Tekoa, in the State of Washington, to Mullan, in the State of Idaho, with a branch from Wallace, in the State of Idaho, to Burke, in said State. 13th. A line from Lower Cascades in the State of Washington, to Upper Cascades, in said State. 14th. A line from Portland, in the State of Oregon, via such route as may be selected by the Board of Directors of the corporation, to a point at or near the mouth of the Columbia River, on either the north or south side of said river. 15th. A line from Dayton, in the State of Washington, to a point at or near Delaney, in said State. 16th. A line from Moscow, in the State of Idaho, towards or to Lewiston, in said State. 17th. A line from a point at or near Biggs Station, in the State of Oregon, towards or to Prineville in said State. 18th. A line from Elgin, in the State of Oregon, towards or to Wallowa, in said State. 19th. A line from Fairfield, in the State of Washington, to Waverly, in said State. 20th. A line from Portland, in the State of Oregon, to St.-John's in said State. 21st. A line from a point near Wardner, in the State of Idaho, to the Sierra Nevada Mine, at or near the head of Deadwood Gulch, in said State, and to acquire in any lawful man-
5728 ner all or any part of the railroads, steamboats, steamship and telegraph lines, and other property formerly or now owned by the Oregon Railway and Navigation Company, the Cascades Railroad Company, the Walla Walla and Columbia River Railroad Company, the Columbia and Palouse Railroad Company, the Oregon Railway Extensions Company, the Washington and Idaho Railroad Company, and the Mill Creek Flume and Manufacturing Company, or of either or any of said companies, or the stocks, bonds or other securities of either or any of said companies, and to maintain and operate such constructed or acquired railroad and telegraph lines and branches, and to carry freight and passengers thereon, and to receive tolls for the carriage of the same.

"'Second. To purchase or consolidate with, lease or otherwise acquire, or to operate and maintain on such terms as may be agreed

upon, any railroad or railroads in Oregon, Washington and Idaho, with its or their rolling stock, equipments and appurtenances, and to complete the same to its authorized terminus.

"'Third. To facilitate and to assist in the construction, building and extension, equipment and operation of any railroad line, steamship or steamboat line in Oregon, Washington or Idaho, or steamship line running from Portland, or any point on the Columbia River, to any other ports, and connected or intended to connect or exchange traffic with the railroad, steamships or steamboats of this corporation, and for such purpose to subscribe for or purchase the stock or bonds of any company owning or operating any such railroad, steam-
5729 ships or steamboats, and to guarantee or otherwise secure the payment of any such bonds or the interest thereon by pledge or mortgage of the property of this corporation, or any part thereof, or otherwise, and to consolidate with or to lease or contract for the operation and maintaining of any and all of such railroads, steamships or steamboat companies so aided.

"'Fourth. To build, purchase, own, lease or operate steamboats between the ports of Portland, Astoria, Victoria, Sitka, San Francisco, or any other ports in the Northern Pacific Ocean, and steamboats on the Columbia, Willamette and Snake Rivers, and also to build, purchase and own or lease docks, piers, warehouses, locks, ferryboats, stages and other means of transportation in connection with the railroads, steamboats, and steamships above mentioned.

"'Fifth. To purchase or lease lands, whether adjacent or contiguous to its railroads, docks or warehouses or not; and to hold, possess, improve, lease, sell, mortgage, or otherwise dispose of such lands in such manner as may be deemed fit.

"'Sixth. To borrow money on bonds, notes or otherwise for the general purposes of the corporation, and to mortgage its railroads, steamships, steamboats, franchises, rolling stock and any and all property, to secure the payment thereof.

"'Seventh. To do all other things necessary or proper for the accomplishment of the objects above specified.'

"*Resolved*, that the Directors of this Company be and they are hereby authorized and directed to file in the manner pro-
5730 vided by law said Supplementary Articles of Incorporation when prepared and executed as aforesaid, and that the said Directors and the officers of this Company are hereby authorized and directed to publish and give any and all notices of the making and filing of such articles required by law;" and,

Whereas, at the adjourned regular meeting of the board of directors of the said The Oregon Railroad and Navigation Company duly called and held at the office of the Company in the City of Portland, Multnomah County, in the State of Oregon, on the 25th day of February, A. D. 1901, the said resolutions of said stockholders meeting were by resolution of said Board of Directors duly ratified and adopted, and the execution and the filing of such Supplementary Articles of Incorporation in the manner and form aforesaid duly au-

thorized, and the giving or publishing of notices of the same duly directed, therefore

Know all men by these presents: That The Oregon Railroad and Navigation Company and the undersigned, Wm. L. Bull, E. S. Benson, Wm. D. Cornish, H. W. Cannon, H. W. Corbett, Wm. Crooks, W. W. Cotton, E. H. Harriman, Wm. M. Ladd, A. L. Mohler, Miles C. Moore, A. L. Mills, Winslow S. Pierce, Mortimer L. Schiff and H. W. Scott, being all the Directors of the said The Oregon Railroad and Navigation Company, in pursuance of said resolution do hereby adopt the following

SUPPLEMENTARY ARTICLES OF INCORPORATION

OF

THE OREGON RAILROAD AND NAVIGATION COMPANY.

The Oregon Railroad and Navigation Company hereby adopts
5731 the following Supplementary Articles of Incorporation in addition to its present Articles of Incorporation for the purpose of engaging in the new enterprise or business pursuits hereinafter specified in addition to the enterprises described in the original Articles of Incorporation in the same manner as if there were inserted after the words "18th. A line from Elgin in the State of Oregon, towards or to Wallowa, in said State" in the first paragraph of Article III. of said Original Articles of Incorporation the following words, to wit:

"19th. A line from Fairfield, in the State of Washington, to Waverly, in said State. 20th. A line from Portland in the State of Oregon, to St. Johns in said State. 21st. A line from a point near Wardner, in the State of Idaho, to the Sierra Nevada Mine, at or near the head of Deadwood Gulch, in said State."

So that said Article III. shall read as follows:

ARTICLE III.

"The business of the corporation shall be—

First. To acquire or construct and equip the following railroad and telegraph lines, namely: 1st. A line from Portland, in the State of Oregon, to Huntington, in said State. 2d. A line from Umatilla Junction, in the State of Oregon, via Wallula Junction, in the State of Washington, to Walla Walla, in the State of Washington. 3rd. A line from Pendleton Junction, in the State of Oregon, via Walla
Walla, to Spokane, in the State of Washington. 4th. A line
5732 from Willows Junction, in the State of Oregon, to Heppner, in said State. 5th. A line from Bolles Junction, in the State of Washington, to Dayton, in said State. 6th. A line from Walla Walla, in the State of Washington, to Dudley and Dixie, in said State. 7th. A line from Connell Junction, in the State of Washington, via La Crosse Junction, in the State of Washington, to Moscow, in the State of Idaho. 8th. A line from Starbuck, in the State of Washington,

to Pomeroy, in said State. 9th. A line from East Portland, in the State of Oregon, to Albina, in said State. 10th. A line from La Grande, in the State of Oregon, to Elgin, in said State. 11th. A line from Winona Junction, in the State of Washington, to Seltice, in said State. 12th. A line from Tekoa, in the State of Washington, to Mullan, in the State of Idaho, with a branch from Wallace, in the State of Idaho, to Burke, in said State. 13th. A line from Lower Cascades, in the State of Washington, to Upper Cascades, in said State. 14th. A line from Portland, in the State of Oregon via such route as may be selected by the Board of Directors of the corporation, to a point at or near the mouth of the Columbia River, on either the north or the south side of said river. 15th. A line from Dayton, in the State of Washington, to a point at or near Delaney, in said State. 16th. A line from Moscow, in the State of Idaho, towards or to Lewiston, in said State. 17th. A line from a point at or near Biggs Station, in the State of Oregon, towards or to Prineville, in said State. 18th. A line from Elgin, in the State of Oregon, towards or to Wallowa, in said State. 19th. A line from Fairfield in the State of Wash-
5733 ington, to Waverly, in said State. 20th. A line from Portland, in the State of Oregon, to St. Johns, in said State. 21st. A line from a point near Wardner, in the State of Idaho, to the Sierra Nevada Mine, at or near the head of Deadwood Gulch, in said State; and to acquire in any lawful manner all or any part of the railroads, steamboats, steamships and telegraph lines, and other property formerly or now owned by the Oregon Railway and Navigation Company, the Cascades Railroad Company, the Walla Walla and Columbia River Railroad Company, the Columbia and Palouse Railroad Company, the Oregon Railway Extensions Company, the Washington and Idaho Railroad Company, and the Mill Creek Flume and Manufacturing Company, or of either or any of said companies or the stock, bonds or other securities of either or any of said companies, and to maintain and operate such constructed or acquired railroad and telegraph lines and branches, and to carry freight and passengers thereon, and to receive tolls for the carriage of the same.

"Second. To purchase or consolidate with, lease or otherwise acquire, or to operate and to maintain, on such terms as may be agreed upon, any railroad or railroads in Oregon, Washington and Idaho, with its or their rolling stock, equipments and appurtenances, and to complete the same to its authorized terminus.

"Third. To facilitate and assist in the construction, building and extension, equipment and operation of any railroad line, steamship or steamboat line in Oregon, Washington or Idaho, or steam-
5734 ship line running from Portland, or any point on the Columbia River, to any other ports, and connected or intending to connect or exchange traffic with the railroad, steamships or steamboats of this corporation, and for such purpose to subscribe for or purchase the stock or bonds of any company owning or operating any such railroad, steamships or steamboats, and to guarantee or otherwise secure the payment of any such bonds or the interest thereon by pledge or

mortgage of the property of this corporation, or any part thereof, or otherwise, and to consolidate with or to lease or contract for the operation and maintaining of any and all of such railroads, steamships or steamboat companies so aided.

"Fourth. To build, purchase, own, lease or operate steamboats between the ports of Portland, Astoria, Victoria, Sitka, San Francisco, or any other ports in the Northern Pacific Ocean, and steamboats on the Columbia, Willamette and Snake Rivers, and also to build, purchase and own or lease docks, piers, warehouses, locks, ferryboats, stages and other means of transportation in connection with the railroads, steamboats and steamships above mentioned.

"Fifth. To purchase or lease lands, whether adjacent or contiguous to its railroads, docks or warehouses or not; and to hold, possess, improve, lease, sell, mortgage or otherwise dispose of such lands in such manner as may be deemed fit.

"Sixth. To borrow money on bonds, notes or otherwise for the general purpose of the corporation, and to mortgage its railroads, steamships, steamboats, franchises, rolling stock and any and all property, to secure the payment thereof.

5735 "Seventh. To do all other things necessary or proper for the accomplishment of the objects above specified."

In testimony whereof the said The Oregon Railroad and Navigation Company has caused these presents, executed in triplicate, to be signed by its President and Secretary and its corporate seal to be hereto attached, and we, the undersigned, Directors of the said Company, have to triplicates thereof set our hands and seals this 26th day of February, 1901.

THE OREGON RAILROAD AND NAVIGATION COMPANY,
By A. L. MOHLER, *President*.

Attest:
W. W. COTTON, *Secretary*.

[CORPORATE SEAL.]

E. H. HARRIMAN.	[SEAL.]
E. S. BENSON.	[SEAL.]
WINSLOW S. PIERCE.	[SEAL.]
MORTIMER L. SCHIFF.	[SEAL.]
H. W. CORBETT.	[SEAL.]
WM. CROOKS.	[SEAL.]
W. W. COTTON.	[SEAL.]
WM. D. CORNISH.	[SEAL.]
W. M. LADD.	[SEAL.]
A. L. MOHLER.	[SEAL.]
WILLIAM L. BULL.	[SEAL.]
A. L. MILLS.	[SEAL.]
MILES C. MOORE.	[SEAL.]
HENRY W. CANNON.	[SEAL.]
H. W. SCOTT.	[SEAL.]

5736 STATE OF OREGON,
County of Multnomah, } ss:

Be it remembered, that on this 26th day of February, A. D. 1901, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within-named E. S. Benson, Wm. Crooks, H. W. Corbett, W. W. Cotton, Wm. M. Ladd, A. L. Mohler, A. L. Mills, and H. W. Scott, who are known to me to be the identical persons described in and who executed the foregoing instrument, and who are known to me to be the Directors of The Oregon Railroad and Navigation Company, and acknowledged to me that they executed the same for the uses and purposes therein mentioned.

That at the same time and place personally appeared A. L. Mohler and W. W. Cotton, to me personally known and personally known to me to be the President and Secretary, respectively, of The Oregon Railroad and Navigation Company, and acknowledged to me that they, and each of them, as such President and Secretary executed the foregoing instrument as and for the act and deed of The Oregon Railroad and Navigation Company for the uses and purposes therein set forth, and the said Cotton being by me first duly sworn did depose and say that he is the Secretary of The Oregon Railroad & Navigation Company; that he is the legal custodian of and has in his possession the corporate seal of The Oregon Railroad & Navigation Company; that the seal affixed to the foregoing instrument purporting to be the seal of such company is such corporate seal; that the
5737 same was so affixed by him as Secretary of said Company on the 26th day of February, 1901, by order of the Board of Directors of said Company, and that he signed his name thereto by like order of the Directors.

In witness whereof I have hereunto set my hand and affixed my official seal at the City of Portland, State of Oregon, the date first above written.

(SEAL)

JAS. G. WILSON,
Notary Public in and for Oregon.

(10c. I. R. Stamp canceled.)

STATE OF NEW YORK,
City and County of New York, } ss.:

Be it remembered that on this 8th day of March, A. D. 1901, before me the undersigned, a Notary Public in and for said county and State, duly commissioned and qualified, personally appeared the within named Wm. L. Bull, Wm. D. Cornish, E. H. Harriman, Winslow S. Pierce, and Mortimer L. Schiff, who are severally personally known to me, and known to me to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal in the City and State aforesaid this 8th day of March, 1901.

(SEAL.)

J. B. MAXWELL,
Notary Public for the State of New York.

(10c. I. R. Stamp-Canceled.)

5738 STATE OF NEW YORK,
County of New York, } ss.:

Be it remembered that on this 8th day of March, A. D. 1901, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and qualified, personally appeared the within named Miles C. Moore, who is personally known to me, and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal in the City and State aforesaid this 8th day of March, 1901.

(SEAL)

J. B. MAXWELL,
Notary Public in and for New York.

My commission expires March 30, 1901.

(10c. I. R. Stamp-canceled.)

KINGDOM OF ITALY,
City of Florence, } ss.:

Be it remembered that on this 27th day of March, A. D. 1901, before me, Edward C. Cramer, United States Consul at the City of Florence, in the Kingdom of Italy, personally appeared the within named Henry W. Cannon, who is personally known to me, and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same for the uses and purposes therein mentioned.

5739 In testimony whereof I have hereunto set my hand and affixed the Consular Seal at Florence, Italy, this twenty-seventh day of March, 1901.

(SEAL.)

EDWARD C. CRAMER,
United States Consul at Florence, Italy.

(10c. I. R. Stamp canceled.)

(Endorsed:)

Supplementary Articles of Incorporation of The Oregon Railroad and Navigation Company. Filed in the office of the Secretary of State of the State of Oregon, for record at Nine o'clock A. M., the 17th day of April, 1901, and recorded on page 429 of Book 14 of Records of Articles of Incorporation of private corporations. F. I. Dunbar, Secretary of State.

ADJOURNED REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE OREGON RAILROAD AND NAVIGATION COMPANY.

Pursuant to the by-laws an adjourned regular meeting of the Board of Directors of The Oregon Railroad and Navigation Company was held at the office of the secretary of the Company in the Worcester Building, Portland, Oregon, on the 19th day of April, 1905, at two o'clock P. M.

The following directors were present: Messrs. Worthington, Scott, Mills, Crooks, Moore, Ladd, Ainsworth, Connor and Cotton.

The meeting was called to order by Vice-President Worthington.

5740 Mr. Mills then moved the adoption of the following resolution, which motion was seconded by Colonel Crooks, said resolution being in words and figures following, to wit:

Resolved, that this company desires to construct and build an extension of its main line from the present terminus thereof at St. Johns, at the intersection of North Second Street and Vancouver (formerly Fessenden) Street, as shown upon the duly recorded plat of the town site of St. Johns and extending thence in a northerly, easterly and southerly direction by some eligible route to a point in the Southeast quarter of section 6, township 1 north, range 1 east of Willamette Meridian, all of said extension to be located in Multnomah County, Oregon, and to exercise in connection with such line the right of eminent domain as provided by the laws of the State of Oregon.

Resolved, further, that said branch or extension be and the same is hereby adopted as a branch and extension of the line of this Company's railroad and that the terminal thereof be as hereinbefore stated.

Be it further *Resolved*, that the secretary of this Company be, and he is hereby, authorized and directed to certify two copies of this resolution under the seal of this company and cause one of said copies to be filed in the office of the Secretary of State of the State of Oregon and the other in the office of the County Clerk of Multnomah County, and to do any other act or thing necessary or proper for the purpose of complying with, and obtaining the benefits of an act of the Legislative Assembly of the State of Oregon entitled

5741 "An Act to provide for the building of branch or side lines or extensions of railway companies," approved February 27, 1901.

Said resolution having been put to a vote, and having received the unanimous vote of all the Directors present was declared duly adopted.

* * * * * * *

There being no further business before the meeting, it was on motion declared adjourned.

(Signed) W. W. COTTON,
Secretary.

(Signed) B. A. WORTHINGTON, *Vice-President.*

STATE OF OREGON,
County of Multnomah } *ss.:*

I, W. W. Cotton, hereby certify that I am secretary of The Oregon Railroad and Navigation Company and of the corporate records thereof; that the foregoing extract from the minutes of the adjourned regular meeting of the Board of Directors of said Company, held in Portland, Oregon, on the 19th day of April, 1905, has been by me carefully compared with the original thereof as the same appears in my office and custody as secretary, and that the same is a full, true and correct copy of so much of the minutes of said meeting as relates to the adoption of the resolution providing for the construction of a branch line or extension of said Company's railroad therein mentioned.

Witness my hand and the corporate seal of The Oregon Railroad and Navigation Company at Portland, Oregon, this 19th
5742 day of April, 1905.

(SEAL.)

W. W. COTTON,
Secretary.

(Endorsed:)

3902. The Oregon Railroad and Navigation Co. Certified copy of Resolution re St. Johns' Spur. April 19, 1905. Filed April 20th, 1905. F. I. Dunbar, Secretary of State.

SUPPLEMENTARY ARTICLES OF INCORPORATION
OF
THE OREGON RAILROAD AND NAVIGATION COMPANY.

Whereas, at an adjourned regular meeting of the stockholders of The Oregon Railroad and Navigation Company, duly called and held at the office of said corporation in the City of Portland, Multnomah County, Oregon, on the 25th day of September, 1905, the following resolutions were by the vote of the holders of more than three-fourths of all of the capital stock of said corporation, and by the unanimous vote of all of the stock represented at the said meeting, adopted, namely:

Resolved, That Article III. of the Articles of Incorporation of this Company which were filed July 16th, 1896, and as amended by Supplementary Articles of Incorporation of the Company, which were filed on the 17th day of April, 1901, be amended by inserting after
the words '21st. A line from a point near Wardner, in the
5743 State of Idaho, to the Sierra Nevada Mine, at or near the head of Deadwood Gulch in said State': in the first paragraph of said Article the following words, to wit:

"'22d. A line from the terminus of this company's present railroad in St. Johns, Multnomah County, Oregon, to a connection with the constructed line of railroad of this company at or near Troutdale, in said county and State. 23d. A line from Wallowa, in the State of Oregon, by some eligible route, to a point at or near Joseph, in said State.'

"*Resolved*, That the President and Secretary and the Directors of this Company be and they are hereby instructed and directed for and on behalf of this Company to prepare and execute in the name of and under the corporate seal of this Company, and in their name, Supplementary Articles of Incorporation amending said Article III. of the Articles of Incorporation of this Company as at present existing, so that said article shall hereafter read as follows:

ARTICLE III.

'The business of the corporation shall be:

'First: To acquire or construct and equip the following railroad and telegraph lines, namely: 1st. A line from Portland, in the State of Oregon, to Huntington, in said State. 2d. A line from Umatilla Junction, in the State of Oregon, via Wallula Junction, in the State of Washington, to Walla Walla, in the State of Washington. 3d. A line from Pendleton Junction, in the State of Orgeon, via Walla Walla, to Spokane, in the State of Washington. 4th. A line from Willows Junction, in the State of Oregon, to Heppner, in said
5744 State. 5th. A line from Bolles Junction, in the State of Washington, to Dayton, in said State. 6th. A line from Walla Walla, in the State of Washington, to Dudley and Dixie, in said State. 7th. A line from Connell Junction, in the State of Washington, via La Crosse Junction, in the State of Washington, to Moscow, in the State of Idaho. 8th. A line from Starbuck, in the State of Washington, to Pomeroy, in said State. 9th. A line from East Portland, in the State of Oregon, to Albina, in said State. 10th. A line from La Grande, in the State of Oregon, to Elgin, in said State. 11th. A line from Winona Junction, in the State of Washington, to Seltice, in said State. 12th. A line from Tekoa, in the State of Washington, to Mullan, in the State of Idaho, with a branch from Wallace, in the State of Idaho, to Burke, in said State. 13th. A line from Lower Cascades, in the State of Washington, to Upper Cascades, in said State. 14th. A line from Portland, in the State of Oregon, via such route as may be selected by the Board of Directors of the corporation, to a point at or near the mouth of the Columbia River, on either the north or south side of said river. 15th. A line from Dayton, in the State of Washington, to a point at or near Delaney, in said State. 16th. A line from Moscow, in the State of Idaho, towards or to Lewiston, in said State. 17th. A line from a point at or near Biggs Station, in the State of Oregon, towards or to Prineville, in said State. 18th. A line from Elgin, in the State of Oregon, towards or to Wallowa, in said State. 19th. A line from Fairfield, in the State of Washington, to Waverly, in said State. 20th. A line from
5745 Portland, in the State of Oregon, to St. Johns, in said State. 21st. A line from a point near Wardner, in the State of Idaho, to the Sierra Nevada Mine, at or near the head of Deadwood Gulch, in said State. 22d. A line from the terminus of this company's present railroad in St. Johns, Multnomah County, Oregon, to a connection with the constructed line of railroad of this Company at or

near Troutdale, in said County and State. 23d. A line from Wallowa, in the State of Oregon, by some eligible route to a point at or near Joseph, in said State, and to acquire in any lawful manner all or any part of the railroads, steamboats, steamship and telegraph lines, and other property formerly or now owned by the Oregon Railway and Navigation Company, the Cascades Railroad Company, the Walla Walla and Columbia River Railroad Company, the Columbia and Palouse Railroad Company, the Oregon Railway Extensions Company, the Washington and Idaho Railroad Company, and the Mill Creek Flume and Manufacturing Company, or of either or any of said companies, or the stocks, bonds or other securities of either or any of said companies, and to maintain and operate such constructed and acquired railroad and telegraph lines and branches, and to carry freight and passengers thereon, and to receive tolls for the carriage of the same.

"Second: To purchase or consolidate with, lease or otherwise acquire, or to operate and maintain, on such terms as may be agreed upon, any railroad or railroads in Oregon, Washington and Idaho, with its or their rolling stock, equipments and appurtenances, and to complete the same to its authorized terminus.

5746 "Third: To facilitate and to assist in the construction, building and extension, equipment and operation of any railroad line, steamship or steamboat line in Oregon, Washington or Idaho, or steamship line running from Portland, or any point on the Columbia River, to any other ports, and connected or intended to connect or exchange traffic with the railroad, steamships or steamboats of this corporation, and for such purpose to subscribe for or purchase the stock or bonds of any company owning or operating any such railroad, steamships or steamboats, and to guarantee or otherwise secure the payment of any such bonds or the interest thereon by pledge or mortgage of the property of this corporation, or any part thereof, or otherwise, and to consolidate with or to lease or contract for the operation and maintaining of any and all of such railroads, steamships or steamboats companies so aided.

"Fourth: To build, purchase, own, lease or operate steamboats between the ports of Portland, Astoria, Victoria, Sitka, San Francisco, or any other ports in the Northern Pacific Ocean, and steamboats on the Columbia, Willamette and Snake Rivers, and also to build, purchase and own or lease docks, piers, warehouses, locks, ferry-boats, stages and other means of transportation in connection with the railroads, steamboats, and steamships above mentioned.

"Fifth: To purchase or lease lands, whether adjacent or contiguous to its railroads, docks, or warehouses or not; and to hold, possess, improve, lease, sell, mortgage or otherwise dispose of such lands in such manner as may be deemed fit.

"Sixth. To borrow money on bonds, notes or otherwise for the general purposes of the corporation, and to mortgage its
5747 railroads, steamships, steamboats, franchises, rolling stock and any and all property, to secure the payment thereof.

"Seventh: To do all other things necessary or proper for the accomplishment of the objects above specified.'

"*Resolved*, that the Directors of this Company be and they are hereby authorized and directed to file said Supplementary Articles of Incorporation in the manner provided by law when the same have been prepared and executed as aforesaid, and that the said Directors and officers of this Company are hereby authorized and directed to publish and give any and all notices required by law of the making and filing of such Supplementary Articles"; and,

Whereas at a regular meeting of the Board of Directors of The Oregon Railroad and Navigation Company duly called and held at the office of the Company in the City of Portland, Multnomah County, Oregon, on the 27th day of September, 1905, the said resolutions of the said stockholders' meeting were by resolution of said Board of Directors duly ratified, confirmed and adopted, and the execution of said Supplementary Articles of Incorporation in the manner and form aforesaid were duly authorized, and the Secretary of the Company was authorized and directed to file the same as required by law and to give notice of the adoption of the same as required by law, now therefore

Know all men by these presents: That The Oregon Railroad and Navigation Company and the undersigned, Wm. L. Bull, Wm. D. Cornish, W. W. Cotton, H. F. Conner, Wm. Crooks, Max-
5748 well Evarts, E. H. Harriman, Otto H. Kahn, W. R. Litzenberg, R. S. Lovett, R. B. Miller, J. P. O'Brien, W. D. Skinner, H. J. Stirling and James Wilson, being all Directors of The Oregon Railroad and Navigation Company, in pursuance of said resolution do hereby adopt the following

SUPPLEMENTARY ARTICLES OF INCORPORATION
OF
THE OREGON RAILROAD AND NAVIGATION COMPANY.

The Oregon Railroad and Navigation Company hereby adopts the following Supplementary Articles of Incorporation in addition to its present Articles of Incorporation for the purpose of engaging in the new enterprises or business pursuits hereinafter specified in addition to the enterprises described in the original Articles of Incorporation of the Company and amended by the Supplementary Articles of Incorporation filed April 17, 1901, in the same manner as if there were inserted after the words "21st. A line from a point near Wardner, in the State of Idaho, to the Sierra Nevada Mine, at or near the head of Deadwood Gulch, in said State"; in the first paragraph of Article III. of said Articles of Incorporation, as so amended, the following words, to wit:

"22nd. A line from the terminus of this company's present railroad in St. Johns, Multnomah County, Oregon, to a connection with
the constructed line of railroad of this company at or near
5749 Troutdale, in said County and State. 23d. A line from Wal-

lowa, in the State of Oregon, by some eligible route to a point at or near Joseph, in said State."

So that said Article III. shall read as follows:

ARTICLE III.

"The business of the corporation shall be—

"First. To acquire or construct and equip the following railroad and telegraph lines, namely: 1st. A line from Portland, in the State of Oregon, to Huntington, in said State. 2d. A line from Umatilla Junction, in the State of Oregon, via Wallula Junction, in the State of Washington, to Walla Walla, in the State of Washington. 3rd. A line from Pendleton Junction, in the State of Oregon, via Walla Walla, to Spokane, in the State of Washington. 4th. A line from Willows Junction, in the State of Oregon, to Heppner, in said State. 5th. A line from Bolles Junction, in the State of Washington, to Dayton, in said State. 6th. A line from Walla Walla, in the State of Washington, to Dudley and Dixie, in said State. 7th. A line from Connell Junction, in the State of Washington, via La Crosse Junction, in the State of Washington, to Moscow, in the State of Idaho. 8th. A line from Starbuck, in the State of Washington, to Pomeroy, in said State. 9th. A line from East Portland, in the State of Oregon, to Albina, in said State. 10th. A line from La Grande, in the State of Oregon, to Elgin, in said State. 11th. A line from Winona Junction, in the State of Washington, to Seltice, in said State.
5750 12th. A line from Tekoa, in the State of Washington, to Mullan, in the State of Idaho, with a branch from Wallace, in the State of Idaho, to Burke, in said State. 13th. A line from Lower Cascades, in the State of Washington, to Upper Cascades, in said State. 14th. A line from Portland, in the State of Oregon, via such route as may be selected by the Board of Directors of the corporation, to a point at or near the mouth of the Columbia River, on either the north or the south side of said river. 15th. A line from Dayton, in the State of Washington, to a point at or near Delaney, in said State. 16th. A line from Moscow, in the State of Idaho, towards or to Lewiston, in said State. 17th. A line from a point at or near Biggs Station, in the State of Oregon, towards or to Prineville, in said State. 18th. A line from Elgin, in the State of Oregon, towards or to Wallowa, in said State. 19th. A line from Fairfield, in the State of Washington, to Waverly, in said State. 20th. A line from Portland, in the State of Oregon, to St. Johns, in said State. 21st. A line from a point near Wardner, in the State of Idaho, to the Sierra Nevada Mine, at or near the head of Deadwood Gulch, in said State. 22d. A line from the terminus of this company's present railroad in St. Johns, Multnomah County, Oregon, to a connection with the constructed line of railroad of this company at or near Troutdale in said County and State. 23d. A line from Wallowa, in the State of Oregon, by some eligible route to a point at or near Joseph, in said State, and to acquire in any lawful manner all or any part

of the railroads, steamboats, steamships and telegraph lines,
5751 and other property formerly or now owned by the Oregon Railway and Navigation Company, the Cascades Railroad Company, the Walla Walla and Columbia River Railroad Company, the Columbia and Palouse Railroad Company, the Oregon Railway Extensions Company, the Washington and Idaho Railroad Company, and the Mill Creek Flume and Manufacturing Company, or of either or any of said Companies, or the stock, bonds, or other securities of either or any of said companies, and to maintain and operate such constructed or acquired railroad and telegraph lines and branches, and to carry freight and passengers thereon, and to receive tolls for the carriage of the same.

"Second. To purchase or consolidate with, lease or otherwise acquire, or to operate and maintain, on such terms as may be agreed upon, any railroad or railroads in Oregon, Washington, and Idaho, with its or their rolling stock, equipments and appurtenances, and to complete the same to its authorized terminus.

"Third. To facilitate and assist in the construction, building and extension, equipment and operation of any railroad line, steamship or steamboat line in Oregon Washington or Idaho, or steamship line running from Portland, or any point on the Columbia River to any other ports, and connected or intending to connect or exchange traffic with the railroad, steamships or steamboats of this corporation, and for such purpose to subscribe for or purchase the stock or bonds of any company owning or operating any such railroad, steamships or steamboats, and to guarantee or otherwise secure the
5752 payment of any such bonds or the interest thereon by pledge or mortgage of the property of this corporation, or any part thereof, or otherwise, and to consolidate with or to lease or contract for the operation and maintaining of any and all of such railroads, steamships or steamboat companies so aided.

"Fourth. To build, purchase, own, lease or operate steamboats between the ports of Portland, Astoria, Victoria, Sitka, San Francisco, or any other ports in the Northern Pacific Ocean, and steamboats on the Columbia, Willamette and Snake Rivers, and also build, purchase and own or lease docks, piers, warehouses, locks, ferry-boats, stages and other means of transportation in connection with the railroads, steamboats and steamships above mentioned.

"Fifth. To purchase or lease lands, whether adjacent or contiguous to its railroads, docks or warehouses or not; and to hold, possess, improve, lease, sell, mortgage or otherwise dispose of such lands in such manner as may be deemed fit.

"Sixth. To borrow money on bonds, notes or otherwise for the general purpose of the corporation, and to mortgage its railroads, steamships, steamboats, franchises, rolling stock and any and all property, to secure the payment thereof.

"Seventh. To do all other things necessary or proper for the accomplishment of the objects above mentioned."

In testimony whereof The Oregon Railroad and Navigation Company has caused these presents, executed in triplicate, to be signed

by its President and its Secretary and its corporate seal to be
5753 hereto attached, and we, the undersigned, Directors of the said Company have to triplicates hereof, set our hands and seals this 27th day of September, 1905.

THE OREGON RAILROAD AND NAVIGATION COMPANY,
By E. H. HARRIMAN, *President.*

(CORPORATE SEAL.)
Attest:

W. W. COTTON, *Secretary.*	(SEAL.)	E. H. HARRIMAN, *Director.*	(SEAL.)
R. S. LOVETT, *Director.*	(SEAL.)	W. D. CORNISH, *Director.*	(SEAL.)
WILLIAM L. BULL, *Director.*	(SEAL.)	O. H. KAHN, *Director.*	(SEAL.)
MAXWELL EVARTS, *Director.*	(SEAL.)	J. P. O'BRIEN, *Director.*	(SEAL.)
WM. CROOKS, *Director.*	(SEAL.)	H. F. CONNER, *Director.*	(SEAL.)
R. B. MILLER, *Director.*	(SEAL.)	H. J. STIRLING, *Director.*	(SEAL.)
JAMES G. WILSON, *Director.*	(SEAL.)	W. R. LITZENBERG, *Director.*	(SEAL.)
W. D. SKINNER, *Director.*	(SEAL.)	W. W. COTTON, *Director.*	(SEAL.)

STATE OF OREGON,
County of Multnomah, } *ss.:*

Be it remembered that on the 7th day of December, 1905, before me the undersigned, a Notary Public in and for said county and State, personally appeared the within named J. P. O'Brien,
5754 W. W. Cotton, H. F. Conner, James G. Wilson, H. J. Stirling, W. R. Litzenberg, W. D. Skinner and William Crooks, who are known to me to be the identical persons described in and who executed the foregoing instrument, and who are known to me to be Directors of The Oregon Railroad and Navigation Company, and acknowledged to me that they executed the same for the uses and purposes therein mentioned.

That at the same time and place personally appeared W. W. Cotton, to me personally known and personally known to me to be the Secretary of The Oregon Railroad and Navigation Company, and acknowledged to me that he as such Secretary executed the foregoing instrument as and for the act and deed of The Oregon Railroad and Navigation Company for the uses and purposes therein set forth, and the said Cotton being by me first duly sworn, did depose and say that he is the Secretary of The Oregon Railroad and Navigation Company; that he is the legal custodian of and has in his possession the corporate seal of The Oregon Railroad and Navigation

Company; that the seal affixed to the foregoing instrument purporting to be the seal of such company is such corporate seal; that the same was affixed by him as Secretary of said Company on the 27th day of September, 1905, by the order of the Board of Directors of said Company, and that he signed his name thereto by like order of the Directors.

In witness whereof, I have hereunto set my hand and affixed my official seal at the city of Portland, State of Oregon, the date first above written.

(NOTARIAL SEAL.)

W. A. ROBBINS,
Notary Public in and for Oregon.

My commission expires September 6, 1906.

5755 STATE OF NEW YORK,
City and County of New York. } ss:

Be it remembered that on this 6th day of November, 1905, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named R. S. Lovett, W. D. Cornish, Maxwell Evarts, William L. Bull, E. H. Harriman, R. B. Miller and Otto H. Kahn, who are known to me to be the identical persons described in and who executed the foregoing instrument, and who are known to me to be directors of The Oregon Railroad and Navigation Company, and acknowledged to me that they executed the same for the uses and purposes therein mentioned.

That at the same time and place personally appeared E. H. Harriman, to me personally known and personally known to me to be the President of The Oregon Railroad and Navigation Company, and acknowledged to me that he as such President executed the foregoing instrument as and for the act and deed of The Oregon Railroad and Navigation Company for the uses and purposes therein set forth, and the said E. H. Harriman being by me first duly sworn did depose and say that he is the President of The Oregon Railroad and Navigation Company, and that he signed his name thereto by the order of the Board of Directors of said Company.

In witness whereof, I have hereunto set my hand and affixed my official seal at the City of New York, State of New York, the date first above written.

(NOTARIAL SEAL.)

CHARLES FRANKLIN,
Notary Public in and for New York

My commission expires March 31, 1905.

5756 (Endorsed:) 3902. Supplementary articles of incorporation of The Oregon Railroad and Navigation Company, filed in the office of the Secretary of State of the State of Oregon, for Record at nine o'clock A. M., the 9th day of December, 1907, and recorded on page 305 of Book 22 of Records of Articles of Incorporation of private corporations. F. I. Dunbar, Secretary of State.

REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE OREGON RAILROAD AND NAVIGATION COMPANY.

Pursuant to the by-laws a regular meeting of the Board of Directors of The Oregon Railroad and Navigation Company was held on Tuesday, January 2d, 1906, at 3 o'clock P. M.

The following directors were present, Messrs. O'Brian, Cotton, Crooks, Miller, Conner, Wilson, Skinner, Stirling and Litzenberg.

The meeting was called to order by Vice-President O'Brien.

Mr. Cotton then moved the adoption of the following resolution, which motion was seconded by Mr. Conner, said resolution being as follows:

Resolved, That this company desires to construct and build a branch or side line of its present constructed line of railroad
5757 extending from a point in the Town of St. Johns in Multnomah County, Oregon, at the intersection of North Second Street and Vancouver (formerly Fessenden) Street, as shown upon the duly recorded plot of the Town of St. Johns and running thence in a northerly, easterly and southerly direction by some eligible route to a connection with the constructed railroad of this Company at a point at or near Clarnie Station in said Multnomah County, all of said extensions to be located in Multnomah County, Oregon, and to exercise in connection with such branch line or side line the right of eminent domain as provided by the laws of the State of Oregon.

Be it further

Resolved, that said branch line or side line be, and the same is hereby adopted as a branch line or side line of the line of this Company's railroad, and that the termini thereof shall be as hereinbefore stated. Be it further

Resolved, that the secretary of this Company be, and he is hereby authorized and directed to certify two copies of this resolution under the seal of this Company and to cause one of said copies to be filed in the office of the Secretary of State of the State of Oregon, and the other in the office of the County Clerk of Multnomah County, Oregon, and to do any other act or thing necessary or proper to be done for the purpose of complying with and obtaining the benefits of any act of the Legislative Assembly of the State of Oregon, entitled, "An act to provide for the method of the building of branch or side lines or extensions by Railway Companies," approved February 27, 1901.

Said resolution having been put to a vote and having re-
5758 ceived the unanimous affirmative vote of all the directors present, was declared duly adopted.

* * * * * * *

There being no further business before the Board, on motion, duly seconded, the Board adjourned.

(SEAL.)

W. W. COTTON, *Secretary.*

STATE OF OREGON,
County of Multnomah, } ss:

I, W. W. Cotton, hereby certify that I am Secretary of The Oregon Railroad and Navigation Company, and reside in Portland, Oregon, and am custodian of the corporate seal of said company; that I have carefully compared the foregoing copy of a portion of the minutes of the regular meeting of the Board of Directors of The Oregon Railroad and Navigation Company held on January 2, 1906, with the original of said minutes which are now in my office and custody as secretary of said company and that the same is a full, true and correct copy of so much of said minutes as relates to the adoption of a resolution therein set forth, and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of The Oregon Railroad and Navigation Company at Portland, Oregon, January 3, 1906.

(SEAL.) W. W. COTTON, *Secretary.*

(Endorsed:) 3902. Filed Jan. 4, 1906. F. I. Dunbar, Secretary of State.

5759 Pamphlet marked Complainant's Exhibit 208.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 208, being an Act of the General Assembly of the State of Kentucky incorporating the Southern Pacific Company, approved March 17, 1884, together with an amendment thereto, approved March 21, 1888, being the only amendment to said Charter.

Complainant's Exhibit 208 is as follows:

COMPLAINANT'S EXHIBIT 208.

Endorsed on Cover:

An act
of
the General Assembly
of the
State of Kentucky
incorporating the
Southern Pacific Company,
approved March 17, 1884.
Amendment thereto,
approved March 21, 1888.

An act to Incorporate the Southern Pacific Company.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. That Henry D. McHenry, William G. Duncan, Samuel E. Hill, Samuel M. Cox, Henry McHenry, Jr., and their
5760 associates and successors and assigns be, and they are hereby

created and constituted a body corporate and politic under the name of the Southern Pacific Company, and as such shall have perpetual succession, and be capable in law to purchase, grant, sell or receive, in trust or otherwise, all kinds of personal and real property, to such amount as the Directors of said Company may from time to time determine; and to contract, and be contracted with, sue and be sued, plead and be impleaded, appear and prosecute to final judgments all suits or actions at law or in equity in all Courts and places, and to have and use a common seal, and to alter the same at pleasure, and to make and establish such by-laws, rules and regulations for the government of said Company and the conduct of its business as said corporation, or the stockholders therein, shall deem expedient or necessary for the management of its affairs, not inconsistent with the Constitution and laws of this State or of the United States; and generally to do and execute all acts, matters and things which may be deemed necessary or convenient to carry into effect the powers and privileges herein granted; *provided, however*, that said corporation shall not have power to make joint stock with, lease, own or operate any railroad within the State of Kentucky.

SEC. 2. The said corporation is hereby authorized and empowered to contract for and acquire, by purchase or otherwise, bonds, stocks, obligations and securities of any corporation, company or association now existing, or hereafter formed or constituted, and bonds,
5761 obligations and securities of any individuals, State, Territory, government or local authorities whatsoever, and to enter into contracts with any corporation, company or association, individuals, State, Territory, government or local authorities, in respect of their bonds, stock, obligations and securities; or in respect of the construction, establishment, acquisition, owning, equipment, leasing, maintenance or operation of any railroads, telegraphs or steamship lines, or any public or private improvements, or any appurtenances thereof, in any State or Territory of the United States, or in any foreign country; and to buy, hold, sell and deal in all kinds of public and private stocks, bonds and securities; and said corporation may borrow and loan money, issue its own bonds or other evidences of indebtedness, and sell, negotiate and pledge the same to such amounts, upon such terms, and in such manner as may from time to time be determined by the Directors of said corporation, and it may mortgage all, or any part, of its property, assets and franchises to secure such bonds and the interest thereon, on such terms and conditions as shall on that behalf be prescribed by its Board of Directors.

SEC. 3. The capital stock of said corporation shall be one million dollars, divided into shares of one hundred dollars each, which shares shall be deemed personal property and may be issued, transferred and forfeited for non-payment in such manner as the Board of Directors of such corporation may determine; and no person shall be in any wise liable as a stockholder of said corporation after said capital stock to such amount of one million dollars shall have been paid in, in
5762 cash, and a certificate to that effect, signed and sworn to by the

Treasurer and a majority of the Board of Directors of said corporation, shall have been filed in the office of the Secretary of State of this State; nor shall the said corporation, nor any of the officers or agents thereof, be thereafter bound to make any further returns or certificates. *Provided, however*, that if after the payment of such capital stock any part thereof shall be withdrawn for, or refunded to, any of the stockholders, when the property of the corporation is insufficient, or will be thereby rendered insufficient, for the payment of all its debts, the stockholders receiving the same shall be bound and obliged to repay to said corporation, or its creditors, the amount so withdrawn or refunded.

SEC. 4. Any two of the persons above named as corporators of said corporation may call the first meeting for the organization of such corporation, at such time and place as they may appoint, by mailing a proper notice of such meeting to each of such corporators at least ten days before the time appointed; and in case a majority of such corporators shall attend such meetings, either in person or by proxy, they may open books for subscriptions to its capital stock, and whenever five hundred thousand dollars shall be subscribed, and ten per cent. of said subscriptions shall be paid, in cash, the stockholders of said corporation may organize the same, and said corporation may proceed to business.

5763 SEC. 5. Each share of stock shall entitle the holder thereof to one vote, in person or by proxy, at all meetings of the stockholders. The holders of a majority in interest of the capital stock present in person or by proxy, shall constitute a quorum. The corporation shall have a lien on all the stock and property of its members invested therein, for all debts due by them to said corporation, which lien may be enforced in such manner as the by-laws shall prescribe.

SEC. 6. The stock, property, and affairs of said corporation, shall be managed by a Board of Directors of such number, not less than three, as may be from time to time determined by the corporators or stockholders. The Directors shall be elected by the stockholders at such time and place, and in such manner, and for such terms, as the stockholders shall from time to time determine. Meetings of Directors or stockholders may be held within or without the state. No person shall be elected a Director who is not a stockholder of the corporation. A majority of the Directors shall constitute a quorum of said board for the transaction of business. The Directors shall appoint from their own number a President, and they shall also appoint a Clerk and Treasurer, and such other officers and agents as they may deem proper, to hold their offices during the pleasure of the Board. In case of a vacancy or vacancies in the Board, the remaining Directors may fill such vacancy or vacancies. The capital stock of said corporation may be increased from time to time to such sum as may be determined by the Board of Directors of said corporation, provided such increase or diminution shall be approved by at least two-thirds in interest of the stockholders of said corporation.

5764 SEC. 7. The annual tax upon said corporation shall be the

same as is now fixed by the law for broker's license; *provided* that all property owned by said corporation and situated in the State shall pay the same State and local tax as is assessed upon similar property; and capital stock in said corporation owned by citizens of the State shall be assessed against the holders thereof as choses in action under the equalization law.

SEC. 8. The Company shall keep an office for the transaction of business, and the Clerk, or assistant clerk, of said corporation shall reside within the State of Kentucky; but the said corporation may keep offices at such places outside of this State as, in the judgment of its Board of Directors, its business may from time to time require. *Provided* that nothing herein contained shall be construed as granting any lottery or banking privileges.

SEC. 9. This act shall take effect immediately, upon its passage.

CHARLES OFFUTT,
Speaker of the House of Representatives.

JAMES R. HINDMAN,
Speaker of the Senate.

Approved March 17, 1884.
J. PROCTOR KNOTT.
By the Governor:
JAS. A. MCKENZIE,
Secretary of State.

5765 An Act to amend "An Act to Incorporate the Southern Pacific Company," Approved March Seventeenth, Eighteen Hundred and Eighty-four.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. That the Act entitled, "An Act to incorporate the Southern Pacific Company," which was approved March seventeen, eighteen hundred and eighty-four, be and the same is amended by adding to Section 1 thereof the following words, to wit: except subject to and in conformity with the provisions of the laws of the State of Kentucky applicable to Railroads, and acquiring no special rights that may be possessed by any railroads in the State except the general and ordinary rights of common carriers as possessed by railroads generally.

SEC. 2. This Act shall take effect from its passage.

BEN JOHNSON,
Speaker of the House of Representatives.

J. W. BRYAN,
Speaker of the Senate.

Approved March 21, 1888.
S. B. BUCKNER.
By the Governor:
GEO. M. ADAMS,
Secretary of State.

POOR COPY

5766 Mr. SEVERANCE. It is stipulated that J. H. Manderfield, District Freight Agent of the San Pedro, Los Angeles & Salt Lake Railroad, would, if sworn as a witness, testify that the statements contained in his letters of March 15, 1909, and March 10, 1909, addressed to S. H. Babcock, Commissioner of Traffic, of Salt Lake City, which letters were introduced in evidence in connection with the testimony of said Babcock and are set out on pages 2396 of the printed record in this case, are true.

Mr. SEVERANCE. Counsel for Defendants states that he is unable to produce the statements showing the divisions and instructions to agents prepared by William Sproule, Freight Traffic Manager of the Southern Pacific Company at San Francisco, testified to by the witness Tool.

Paper marked Complainant's Exihibit 209.

Mr. SEVERANCE. It is stipulated that the witness Frank W. White would, if present, testify that Complainant's Exhibit 209 is a correct statement showing special rates on salt and sugar between San Francisco, California, and Portland, Oregon, between August 1, 1895, and May 11, 1904, as shown by the Southern Pacific Company's tariffs on file in the office of the Interstate Commerce Commission.

I offer Complainant's Exhibit 209 in evidence.

Complainant's Exhibit 209 is as follows:

5767

COMPLAINANT'S EXHIBIT 209.

INTERSTATE COMMERCE COMMISSION

BUREAU OF TARIFFS.

Supplement No. 2 to Statement No. 1688, showing special rates on Salt and Sugar between San Francisco, Cal., and Portland, Ore. (Between August 1, 1895 and May 11, 1904). Applying in either direction unless otherwise noted.

Southern Pacific Co. Tariffs.	Effective Dates.	Rates in Cents Per 100 lbs.	
		Salt, C. L.	Sugar, C. L.
Amndt. 5 to ICC 178 Frt. Tar. 10-0	Aug. 1, 1895	25	30
I. C. C. 367 Frt. Tar. 14-0	July 1, 1896	20	30
Amndt. 3 to ICC 367 Frt. Tar. 14-0	Oct. 20, 1896	25	43
I. C. C. 769 Spec. Frt. Tar. 20-0	Aug. 1, 1897	7½	7½*
I. C. C. 899 Spec. Frt. Tar. 22-0	Dec. 5, 1897	7½	7½*
Amndt. 6 to Spec. Frt. Tar. ICC 22-0	Jan. 23, 1898	8	8*
I. C. C. 1048, Spec. Frt. Tar. 23-0	Feb. 10, 1898	8	8*
I. C. C. 1481, Spec. Frt. Tar. 30-0	Feb. 10, 1900	8	8*
I. C. C. 1743, Spec. Frt. Tar. 33-0	May 4, 1901	8	10½*
Amndt. 4 to Spec. Frt. Tar. 33-0	Aug. 1, 1901	10½	13*
I. C. C. 1780, Spec. Frt. Tar. 37-0	Sept. 26, 1901	10½	No change.*
			13*

*Apply North bound only.

5768 Mr. LOVETT. It is stipulated that the Chicago office expenses of J. C. Stubbs are apportioned between the Union Pacific and Southern Pacific lines, of which he is traffic director, on

the basis of interline traffic earnings available for the last twelve months; that is to say: the May expenses are apportioned on the basis of earnings for twelve months ending March 31st; that J. Kruttschnitt's office expenses are apportioned among the lines of which he is Director of Maintenance and Operation, on the basis of revenue train mileage for the current month.

The Texas lines operated by companies whose stock is owned by the Southern Pacific Company do not pay any portion of the office expenses of either the said Stubbs or the said Kruttschnitt, but the Southern Pacific Company (Pacific System), as between the Southern Pacific Company's and the Union Pacific System's lines, pay the proportion that, on the basis above stated, would be chargeable against the said Texas lines.

Mr. SEVERANCE. It is understood that testimony will be offered by the Defendants with reference to the Sunset Limited train and passenger traffic generally from San Francisco to New Orleans; that if such testimony is not offered, the same may be put in hereafter by Complainant with the same effect as though now offered.

Complainant rests.

5769 Mr. LOVETT. Counsel for Defendants now gives notice of his desire to offer certain documentary evidence on the 14th day of July, 1909, at 10.30 A. M., and we ask that the further hearing herein be adjourned until Wednesday, July 14, 1909, at the City of Chicago, Illinois, at the office of the United States Marshal, and that at the termination of the hearing on said 14th day of July, 1909, an adjournment be taken until Monday, October 4, 1909, at New York, N. Y., the specific place of hearing to be designated at the hearing in Chicago.

The EXAMINER. Does counsel for the Government consent to such adjournment?

Mr. SEVERANCE. Yes.

The hearing was accordingly adjourned until Wednesday, July 14, 1909, at the office of the United States Marshal, Federal Building, Chicago, Ill.

C

Volume VIII.

(EVIDENCE FOR DEFENDANTS.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. ~~920~~ 446

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED OCTOBER 9, 1911.

(22896)

No. 993—In Equity.

IN THE

Circuit Court of the United States

FOR THE DISTRICT OF UTAH.

THE UNITED STATES OF AMERICA,
Complainant,

v.

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY; THE OREGON RAILROAD & NAVIGATION COMPANY; THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; FARMERS' LOAN & TRUST COMPANY; EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, and WILLIAM A. CLARK,
Defendants.

EVIDENCE AND PROCEEDINGS BEFORE THE SPECIAL EXAMINER.

Volume VIII.—Defendants.

WITH LIST OF WITNESSES AND EXHIBITS.

INDEX OF EXHIBITS IN VOLUME 8.

(No oral testimony in this volume.)

		Original.	Print.
Defendants' Exhibit	10	5771	3469
" "	11	5846	3511
" "	12	5848	3513
" "	13	5856	3517
" "	14	5911	3547
" "	15	5913	3548
" "	16–A	5919	3551
" "	16–B	5953	3568
" "	16–C	5964	3575
" "	17	5966	3576
" "	18	6015	3603
" "	19	6017	3604
" "	20	6024	3608
" "	21	6055	3624
" "	22	6080	3637
" "	23	6081	3638
" "	24	6089	3642
" "	25	6093	3644
" "	26	6099	3647
" "	27	6116	3657
" "	28	6181	3692
" "	29	6183	3693
" "	30	6189	3697
" "	31	6236	3721
" "	32	6281	3746
" "	33	6282	3746
" "	34	6288	3749
" "	35	6342	3777
" "	36	6370	3793
" "	37	6392	3804
" "	38	6440	3829
" "	39	6450	3834
" "	40	6460	3839
" "	41	6484	3852
" "	42	6490	3855
" "	43	6496	3858
" "	44	6532	3877

(For complete index, see end of last volume.)

5770 OFFICE OF UNITED STATES MARSHAL,
FEDERAL BUILDING, CHICAGO, ILL.,
Wednesday, July 14, 1909, 10.30 a. m.

The parties by counsel appeared before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place, pursuant to adjournment, and thereupon proceeded to Room No. 627 in said building, where the following proceedings were had.

Present: On behalf of the Complainant, Mr. C. A. Severance; on behalf of the Defendants, Mr. R. S. Lovett.

The EXAMINER. It is not your design to introduce any oral evidence at this hearing?

Mr. LOVETT. No.

Mr. LOVETT. Defendants offer in evidence as Defendants' Exhibit 10, copy of bill of complaint filed in Circuit Court of the United States, for the Eighth Judicial District of Nebraska, in the case of Oliver Ames, Second, and Samuel Carr, Executors of Last Will and Testament of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edwin F. Atkins, Complainants, *vs.* The Union Pacific Railway Company, and others.

It is stipulated that the copy offered may be used in place and stead of the original, subject to correction.

Defendants' Exhibit 10 is as follows:

5771 DEFENDANTS' EXHIBIT 10.

CIRCUIT COURT OF THE UNITED STATES FOR THE EIGHTH JUDICIAL DISTRICT OF NEBRASKA.

OLIVER AMES, SECOND, AND SAMUEL CARR, EXECUTORS of the Last Will and Testament of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edwin F. Atkins, Complainants,

vs.

THE UNION PACIFIC RAILWAY COMPANY; THE ATCHISON, Colorado and Pacific Railway Company; The Atchison, Jewell County and Western Railway Company; The Boulder Valley and Central City Wagon Road Company; The Bozeman Coal Company; The Callaway Improvement Company; The Carbon Cut-Off Railway Company; The Central Branch Union Pacific Railroad Company; The Denver, Leadville and Gunnison Railway Company; The Green River Water Works Company; The Junction City and Fort Kearney Railway Company; The Kan-

sas Central Railroad Company; The Kansas City and Omaha Railroad Company; The Kearney and Black Hills Railway Company; The Laramie, North Park and Pacific Railroad and Telegraph Company; The Lawrence and Emporia Railway Company;

5772 The Loveland Pass Mining and Railroad Tunnel Company; The Montana Railway Company; The Morrison Stone, Lime and Town Company; The Omaha and Republican Valley Railway Company; The Oregon Railway and Navigation Company; The Oregon Short Line and Utah Northern Railway Company; The St. Joseph and Grand Island Railroad Company; The Salina and Southwestern Railway Company; The Solomon Railroad Company; The Union Land Company; The Union Pacific, Denver and Gulf Railway Company; The Union Pacific, Lincoln and Colorado Railway Company; and The Union Pacific Coal Company. (Title of original bill of complaint amended as per order of Court, October 16, 1893, by interlineation of names of following additional defendants: The Cascade Railroad Company; The Columbia and Palouse Railroad Company; The Mill Creek Flume and Manufacturing Company; The Oregon Railway Extensions Company; The Walla Walla and Columbia River Railroad Company; The Washington and Idaho Railroad Company; The Wood River Improvement Company; The Echo and Park City Railway Company), Defendants.

Bill of Complaint. In Equity.

5773 *To the Honorable the Judges of the said Court in Equity Sitting:*

Your orators above named, suing for themselves and also for all other parties similarly situated who may desire to become complainants herein, bring this bill of complaint against the Union Pacific Railway Company; the Atchison, Colorado and Pacific Railway Company; The Atchison, Jewell County and Western Railroad Company; the Boulder Valley and Central City Wagon Road Company; the Bozeman Coal Company; the Callaway Improvement Company; the Carbon Cut-Off Railway Company; The Central Branch Union Pacific Railroad Company; the Denver, Leadville and Gunnison Railway Company; the Green River Water Works Company; the Junction City and Fort Kearney Railway Company; the Kansas Central Railroad Company; the Kansas City and Omaha Railroad Company; Kearney and Black Hills Railway Company; the Laramie, North Park and Pacific Railroad and Telegraph Company; the Lawrence and Emporia Railway Company; the Loveland Pass Mining and Railroad Tunnel Company; the Montana Railway Company; The Morrison Stone, Lime and Town Company; the

Omaha and Republican Valley Railway Company; the Oregon Railway and Navigation Company; the Oregon Short Line and Utah Northern Railway Company; the St. Joseph and Grand Island Railroad Company; the Salina and Southwestern Railway Company; the Solomon Railroad Company; the Union Land Company; the Union Pacific, Denver and Gulf Railway Company; the Union Pacific, Lincoln and Colorado Railway Company; and the Union Pacific Coal Company.

And thereupon your orators complain and say:

5774 That Frederick L. Ames, late of the State of Massachusetts, and prior and up to the time of his decease a citizen of said State, departed this life on or about the 13th day of September, 1893, leaving an estate both real and personal to be administered in the said State of Massachusetts, and also leaving a last will and testament duly executed; that Oliver Ames, 2d, and Samuel Carr are the executors named in the said will, and said last named persons have been duly appointed as executors of the said last will and testament of the said Frederick L. Ames, deceased, by an order duly made by the Probate Court in and for the County of Bristol in the State of Massachusetts, and on the 19th day of September, 1893, said executors duly qualified and entered upon the performance of their duties as such executors. That as executors of Frederick L. Ames, late of Easton, in the State of Massachusetts, they are the holders and owners of more than 10,000 shares of the capital stock of the defendant the Union Pacific Railway Company, of more than 5,000 shares of the capital stock of the defendant the Oregon Short Line and Utah Northern Railway Company, of more than 5,000 shares of the capital stock of the defendant the Union Pacific, Denver and Gulf Railway Company, and of about 1,500 shares of the capital stock of the defendant the Oregon Railway and Navigation Company, and also as such executors the owners and holders of considerable amounts of collateral trust six per cent bonds of the Union Pacific Railroad Company, of collateral trust three-year six per cent notes of the Union Pacific Railway Company, of five per cent bonds of the Union Pacific,

5775 Denver and Gulf Railway Company, of six per cent bonds of the Fort Worth and Denver City Railway Company, of six per cent bonds of the Oregon Short Line Railway Company, of five per cent bonds of the Oregon Short Line and Utah Northern Railway Company, of seven per cent bonds of the Utah Southern Railway Company, and of six per cent bonds of the Idaho Central Railroad Company, all of which were held and owned by said Frederick L. Ames at the time of his decease. The said several instruments and obligations under and by virtue of which said notes and bonds were issued and are outstanding are more specifically described hereinafter. And complainants beg leave hereafter upon any hearing of this cause to make proof thereof when the same may become material or necessary.

Your orators further aver that the complainant, Peter B. Wyckoff, is the holder and owner of numerous shares of stock of the said Union

Pacific Railway Company, and the complainant, Edwin F. Atkins, is the owner of numerous shares of the said Union Pacific Railway Company, and of the Union Pacific, Denver and Gulf Company, and is also the holder and owner of certain bonds and securities of certain of the defendant companies named above, the precise character and amounts of each of which your orators stand willing and ready fully to show to the Court upon any hearing herein. And your orators aver that the said Oliver Ames, 2d, and the said Samuel Carr and the said Edwin F. Atkins are all of them residents and citizens of the State of Massachusetts, and the said Peter B. Wyckoff is a resident and citizen of the State of New York.

Second. That the defendant The Union Pacific Railway Company is a corporation created by and existing under certain laws of the United States, to wit, an Act of Congress entitled "An
5776 Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1st, 1862; also an Act of Congress amendatory thereof, approved July 2d, 1864, and other Acts of the Congress of the United States amendatory and supplemental thereto.

The said Union Pacific Railway Company was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in the said several Acts of Congress by the consolidation of the Union Pacific Railroad Company, The Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company; each of said railway and telegraph companies being named and described in said acts; and the said Union Pacific Railway Company, so created by consolidation, as aforesaid, thereupon became the successor of each of the said constituent companies, and thereby became vested with all the rights, titles, interests, properties and franchises of each of said constituent companies. The said Union Pacific Railway Company, as well also as the Union Pacific Railroad Company, were, by the said several Acts of Congress, authorized to construct, maintain and operate a railroad and telegraph line from the State of Iowa in a westerly direction through the States of Nebraska, Wyoming, and into the Territory of Utah; and the said Kansas Pacific Railway Company was authorized to construct a line of railroad from Missouri in a westerly direction through the State of Kansas and into the State of Colorado to the City of Denver, and the said Denver Pacific Railway and Tele-
5777 graph Company was authorized to construct a railroad from the said City of Denver through the States of Colorado and Wyoming to Cheyenne in said last-named State. The said Union Pacific Railway Company resides in and has and maintains a principal place of business at Omaha, in the State and District of Nebraska. And your orators beg leave to refer to each and every of the said Acts of Congress as if incorporated herein.

The defendant the Atchison, Colorado and Pacific Railroad Company is a corporation formed and existing under and by virtue of

the laws of the State of Kansas, owning a line of railroad in said State, and is a citizen of said State of Kansas.

The Atchison, Jewell County and Western Railroad Company is an incorporation organized and existing under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Boulder Valley and Central City Wagon Road Company is an incorporation organized and existing under and by virtue of the laws of the State of Colorado, owning a roadway therein, and is a citizen of said State.

The Bozeman Coal Company is an incorporation organized and existing under and by virtue of the laws of the State of Montana, owning coal mines and property therein, and is a citizen of the State.

The Callaway Improvement Company is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, engaged in railway construction and real estate enterprises therein, and is a citizen of said State.

The Carbon Cut-Off Railway Company is an incorporation
5778 of the State of Wyoming, owning a line of railroad therein, and is a citizen of said State.

The Central Branch Union Pacific Railroad Company is an incorporation organized and existing under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Denver, Leadville and Gunnison Railway Company is an incorporation of the State of Colorado, owning a line of railroad therein, and is a citizen of said State.

The Green River Water Works Company is an incorporation of the State of Wyoming, owning a water-supply plant and works therein, and is a citizen of said State.

The Junction City and Fort Kearney Railway Company is an incorporation of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Kansas Central Railroad Company is a corporation organized and existing under the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Kansas City and Omaha Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, owning a line of railroad therein, and is a citizen of said State.

The Kearney and Black Hills Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, owning a line of railroad therein, and is a citizen of said State.

The Laramie, North Park and Pacific Railroad and Telegraph Company is a corporation organized and existing under and
5779 by virtue of the laws of the State of Wyoming, owning a line of railroad therein, and is a citizen of said State.

The Lawrence and Emporia Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Loveland Pass Mining and Railroad Tunnel Company is a corporation organized and existing under and by virtue of the laws of the State of Colorado, engaged in the construction of a railroad and mining tunnel therein, and is a citizen of said State.

The Montana Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Montana, owning a line of railroad therein, and is a citizen of said State.

The Morrison Stone, Lime and Town Company is a corporation organized and existing under and by virtue of the laws of the State of Colorado, engaged in a general business therein, and is a citizen of said State.

The Omaha and Republican Valley Railway Company is a corporation formed by the consolidation of certain other corporations under and by virtue of the laws of the State of Nebraska, as well as under and by virtue of the laws of the State of Kansas. The said railway company owns a line of railroad in both of said States, and is a citizen of the State of Nebraska, as well also as the State of Kansas.

The Oregon Railway and Navigation Company is a corporation organized and existing under and by virtue of the laws of the State of Oregon, owning a line of railroad therein, and is a citizen of said State.

5780 The Oregon Short Line and Utah Northern Railway Company is a corporation formed by the consolidation of certain other corporations under and by virtue of the laws of the State of Wyoming, as well as by virtue of certain Acts of the Congress of the United States, owning a line of railroad in the States of Wyoming, Idaho and Montana and in the Territory of Utah, and said consolidated corporation so formed, organized and existing as aforesaid is a citizen of the State of Wyoming.

The St. Joseph and Grand Island Railway Company is a corporation formed and existing under and by virtue of the laws of the State of Kansas, reincorporated also as a corporation under and by virtue of the laws of the State of Nebraska, owning a line of railroad in both of said States. The said corporation is a citizen of the State of Kansas, as well, also, as a citizen of the State of Nebraska.

The Salina and Southwestern Railway Company is a corporation formed by the consolidation of certain other corporations, under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Solomon Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Union Land Company is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, engaged in a general land business therein, and is a citizen of said State.

The Union Pacific, Denver and Gulf Railway Company is a corporation formed by the consolidation of certain other cor-
5781 porations under and by virtue of the laws of the State of Colorado as well as under and by virtue of the laws of the State of Wyoming. Said consolidated corporation owns a line of railroad in both of said States, as well, also, as in the Territory of New Mexico, and is a citizen of the State of Colorado, and a citizen of the State of Wyoming.

The Union Pacific, Lincoln and Colorado Railway Company is a corporation formed by the consolidation of certain other corporations under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Union Pacific Coal Company is a corporation formed and existing under and by virtue of the laws of the State of Wyoming, engaged in a general coal mining and sales business in said State, as well also in Colorado and Utah, and is a citizen of said State of Wyoming.

Your orators, in alleging the incorporation, organization and citizenship of each of the said parties defendant as aforesaid, further say that the manner and character of operation of the said several lines of railroad owned by the said several defendants is more fully and specifically set out and described hereinafter.

Third. The defendant The Union Pacific Railway Company is a corporation created and existing under the laws of the United States, to-wit, an Act of Congress of the United States, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of
the same for Postal, Military and other purposes," approved
5782 July 1, 1862, and an Act of Congress approved July 2d, 1864, being an Act to amend the above-mentioned act, and other acts and amendments to the said acts enacted by the Congress of the United States. The said Union Pacific Railway Company is a consolidated corporation formed on or about January 24th, 1880, by articles of union and consolidation entered into between the Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, created or mentioned and described in and by the aforesaid Acts of Congress. The said consolidated corporation, to-wit, the Union Pacific Railway Company, owns a line of railway extending from Council Bluffs, in the State of Iowa, westerly through the States of Nebraska and Wyoming into the Territory of Utah to Ogden, a distance of about 1,042 miles; and also a certain line of railway extending from Kansas City, in the State of Missouri, westerly through the State of Kansas and into the State of Colorado to Denver, a distance of about 639 miles; and also a certain line of railway extending from Denver, in the State

of Colorado, in a northerly direction to Cheyenne, in the State of Wyoming, a distance of about 106 miles; together with certain terminal extensions and spur tracks used in connection therewith, making a total mileage of 1,829 miles or thereabouts. Your orators beg leave to refer to each and all of the said Acts of Congress, and all Acts of Congress relating to the said railroads, the same as if incorporated herein.

Fourth. The defendant the Union Pacific Railway Company is also the owner of a large amount in value of the shares of stock and bonds of various corporations owning branch or connecting railway and telegraph lines, through the ownership whereof, and by contracts and arrangements wherewith, it is enabled to and
5783 does control the business and property of the said corporations, as hereinafter stated, to the great advantage of itself and its creditors and security holders.

Your orators state that the said constituent companies which formed the said defendant company the Union Pacific Railway Company prior to said consolidation, and the Union Pacific Railway Company, subsequent to said consolidation, with a view to increase their traffic and business and to protect the value of their property and franchises, invested their earnings or other means in the bonds and shares of certain connecting railroad companies in Iowa, Nebraska, Missouri, Kansas, Colorado, Wyoming, Utah and other States; that such investments were made with the assent of the Government Directors and the United States Auditor and Commissioner of Railroads, and were regularly reported by the last-named officers to the Congress of the United States. In pursuance of this policy, and for the purposes aforesaid, the defendant the Union Pacific Railway Company owns, controls or operates, as hereinafter stated, the following named roads which connect with the said Union Pacific Railway Company, are tributary to it and form part of its system of railways known as the Union Pacific system of railways, to-wit:

1. The railroad of the Omaha and Republican Valley Railway Company, situated in the States of Nebraska and Kansas, having a total mileage of 482.05 miles. The capital stock of said Omaha and Republican Valley Railway Company now issued and outstanding is $2,401,023.77, all of which is owned by the said Union Pacific Railway Company, and is now pledged under a certain trust indenture of September 4th, 1891, hereinafter more specifically
5784 referred to and described. The Omaha and Republican Valley Railroad Company, which was merged into and became part of the said Omaha and Republican Valley Railway Company by consolidation, as hereinbefore stated, issued and disposed of its mortgage bonds dated July 1st, 1879, due July 1st, 1909, in the sum of $1,559,000, with interest at the rate of seven per cent., payable in January and July. The trustees named in the said mortgage are Peter B. Wyckoff and Benjamin F. Ham. And the said Omaha and Republican Valley Railway Company issued and disposed of its

consolidated first mortgage bonds to the amount of $3,136,000, dated February 15th, 1887, due March 1st, 1927, interest at the rate of five per cent. The trustee named in said mortgage is the American Loan and Trust Company of Boston. And also issued and disposed of its extension first mortgage bonds in the sum of $1,246,000, dated May 1st, 1887, due May 1st, 1927, interest five per cent. The trustee named in said mortgage is the American Loan and Trust Company of Boston. Of the above-mentioned bonds there are pledged in the six per cent. Collateral Trust of the Union Pacific Railroad Company of July 1st, 1879, $887,000 of the Omaha and Republican Valley Railroad Company bonds, and in the five per cent. Collateral Trust of the Union Pacific Railway Company of April 2d, 1883, hereinafter mentioned, $589,000 of the Omaha and Republican Valley Railroad Company bonds, and $1,859,000 of the Omaha and Republican Valley Railway Company said consolidated first mortgage bonds. The said American Loan and Trust Company of Boston, trustee for certain mortgage creditors of the Kansas Pacific Railway Company,
holds $636,000 of said Omaha and Republican Valley Railway
5785 Company consolidated first mortgage bonds. The trustees
under the said trust indenture of September 4th, 1891, hold $41,000 of Omaha and Republican Valley Railroad Company bonds, $460,000 Omaha and Republican Valley Railway Company consolidated first mortgage bonds, and $1,246,000 of Omaha and Republican Valley Railway Company extension bonds. All of the said stocks and bonds so pledged as aforesaid are the absolute property of the Union Pacific Railway Company, subject to the trusts created by the said several indentures whereby the same were pledged, as afore-said; the voting power on said stocks being in the Union Pacific Railway Company while it is not in default under the aforesaid indentures whereby the said stocks were pledged.

2. The railroad of the Union Pacific, Denver and Gulf Railway Company, including the Fort Worth and Denver City Railway Company and the Pan Handle Company situate in the States of Colorado, Wyoming and Texas and in the Territory of New Mexico the total mileage of the roads owned and operated under contract and trackage rights is 1,463.23 miles.

The total amount of Union Pacific, Denver and Gulf Railway Company consolidated mortgage bonds, issued and outstanding, is $15,714,000, of which the Union Pacific Railway Company owns $7,262,000. Of the bonds thus owned, $7,189,000 are held by the trustees under the trust indenture of September 4, 1891, and $73,000 are held in the trust created for the benefit of the mortgage creditors of the Kansas Pacific Railway Company.

In addition to the above bonds, the Union Pacific Railway Company owns $4,719,000 in the first mortgage seven per cent. bonds of
the Colorado Central Railroad Company, one of the con-
5786 stituent companies forming part of the Union Pacific, Denver
and Gulf Railway Company. Of these bonds, $1,795,000 are held in the Union Pacific six per cent. collateral trust, $1,202,000 in

the five per cent. collateral trust, $1,392,000 are held by the trustees under the trust indenture of September 4, 1891, and $197,000 are in the trust created for the benefit of the mortgage creditors of the Kansas Pacific Railway Company.

The Union Pacific Railway Company also owns $13,251,882 of a total issue of $32,634,482 Union Pacific, Denver and Gulf stock. The stock thus owned is held by the trustees under the trust indenture of September 4, 1891.

The Union Pacific, Denver and Gulf Railway Company owns $944,000 of its own consolidated first mortgage bonds, $65,000 Colorado Central Railroad Company first mortgage seven per cent. bonds, $101,000 of the Union Pacific Coal Company first mortgage five per cent. bonds, and $100,700 of the capital stock of the Union Pacific Coal Company. These bonds and stock, excepting the Colorado Central bonds, were pledged with the Union Pacific Railway Company as collateral for advances made by that company for account of this company, with the power in the Union Pacific Railway Company to rehypothecate or sell the same, and they have been deposited by that company with the trustees under the trust indenture of September 4, 1891.

The Union Pacific, Denver and Gulf Railway Co. owns $3,406,800 of its own stock, and $7,766,000 of the capital stock of $9,375,000 of the Fort Worth and Denver City Railway Co. It also owns $218,000 Pan-Handle Railway Co. first mortgage five per cent. bonds of a total issue of $225,000; and $100,000 Fort Worth and Denver
5787 City Railway Co. equipment trust five per cent. bonds, all that are outstanding; and $5,000 Fort Worth and Denver City Railway Co. six per cent. bonds. The Pan-Handle and Fort Worth and Denver City companies bonds thus owned are held by the trustee of the Union Pacific, Denver and Gulf Railway Co. consolidated mortgage as part security for the bonds issued thereunder.

All of the said stocks and bonds so pledged as aforesaid are the absolute property of the Union Pacific Railway Company, subject to the trusts created by the said several indentures whereby the same were pledged, as aforesaid; the voting power on said stocks being in the Union Pacific Railway Company while it is not in default under the aforesaid indentures whereby the said stocks were pledged.

3. The railroad of the consolidated railway company known as the Oregon Short Line and the Utah Northern Railroad Company and its leased and operated lines, situated in the States of Wyoming, Idaho, Montana, Nevada and Oregon, and in the Territory of Utah. Said company has constructed and acquired or owns 1,424.84 miles of railroads, and operates under lease of the railway of Oregon Railway and Navigation Company, 1,059.33 miles, making a total of 2,484.17 miles of owned, leased and operated lines.

The stock of the Oregon Short Line and Utah Northern Railway Co. is limited to $27,000,000. On December 31, 1892, the amount outstanding, including the stock of constituent companies not then exchanged, was $26,244,853.32, of which the Union Pacific Railway

Co. owned $15,116,703.33. All of the stock owned by the Union Pacific Railway Co., excepting $1,000 in amount, is held by
5788 the trustees under the trust indenture of September 4, 1891.

The Oregon Short Line and Utah Northern Railway Co. owns $14,508,200, out of a total issue of $24,000,000, of the stock of the Oregon Railway and Navigation Co. Of the stock thus owned $13,000,000 is held by the trustee under the collateral trustee indenture of the Oregon Short Line and Utah Northern Railway Co., and $487,200 is held by the same trustee as an investment for the sinking fund established thereunder. The balance of the stock thus owned ($1,021,000) is pledged with the Union Pacific Railway Company, with power in that company to rehypothecate or sell the same. The stock thus pledged with the Union Pacific Railway Company is deposited with the trustees under that company's trust indenture of September 4, 1891.

The amount of collateral trust bonds out-standing on December 31, 1891, was $13,000,000. Of the bonds thus outstanding, the Union Pacific Railway Company owned $2,837,500, which are held by the trustees under that company's trust indenture of September 4, 1891.

The amount of Oregon Short Line and Utah Northern Railway Co. consolidated first mortgage bonds outstanding on December 31, 1892, was $11,024,000. Of these the Union Pacific Railway Co. owns $932,000. That company also owns $4,420,000 in Utah and Northern Railway Co. first mortgage seven per cent. bonds; $418,000 in Utah Southern Railway Co. first mortgage seven per cent. bonds; $982,000 in Utah Southern Railroad extension first mortgage seven per cent. bonds; and $85,000 in Idaho Central Railway Co. first mortgage six per cent. bonds.

The Oregon Short Line and Utah Northern Railway Co.
5789 owns the following bonds of its own issues:

Oregon Short Line and Utah Northern Railway Co. Consolidated 5 per cent. Bonds	$1,814,000
Idaho Central Railway Co. First Mortgage 6 per cent. Bonds	1,000
Utah Central Railway Co. First Mortgage 6 per cent. Bonds	1,000

At the close of 1892, the Oregon Short Line and Utah Northern Railway Co. was indebted to the Union Pacific Railway Co. in the sum of $1,066,500.47. Against this, it had pledged with that company, with the power in the Union Pacific to rehypothecate or sell, $1,750,000 in Oregon Short Line and Utah Northern Railway Co. consolidated five per cent. bonds; $1,021,000 in Oregon Railway and Navigation Co. stock; $411,000 in Union Pacific Coal Co. first mortgage five per cent. bonds, and $461,400 in Union Pacific Coal Co. stock. The Oregon Short Line and Utah Northern Railway Co. had also pledged with the Union Pacific Railway Co., with the power in that company to rehypothecate or sell, $712,000 in Oregon Railway and Navigation Co. consolidated mortgage five per cent. bonds, and $1,057,000 in Oregon Railway and Navigation Co. collateral trust five per cent. bonds. These bonds were owned by the Oregon Railway and Navigation Co., which company was in turn

indebted to the Oregon Short Line and Utah Northern Railway Co. for moneys advanced in the construction of the Washington and Idaho Railroad, the road of the Oregon Railway Extensions Co., and for additional equipment furnished for, and betterments made on, the lines of the Oregon Railway and Navigation Co. The
5790 bonds and stock thus pledged with the Union Pacific Railway Co. were by that company deposited with the trustees under the trust indenture of September 4, 1891.

All of the said stocks and bonds so pledged, as aforesaid, are the absolute property of the Union Pacific Railway Co., subject to the trusts created by the said several indentures, whereby the same were pledged as aforesaid; the voting power on said stocks being in the Union Pacific Railway Co. while it is not in default under the aforesaid indentures, whereby the said stocks were pledged.

The Oregon Railway and Navigation Co. under an indenture of lease dated January 1, 1887, leased its said railroads to the Oregon Short Line Railway Company, which is now a constituent company of the said Oregon Short Line and Utah Northern Railway Company. The Union Pacific Railway Company was a party to the said indenture. Said indenture was subsequently, in some respects, modified. On or about December 6th, 1889, the Oregon Short Line & Utah Northern Railway Company entered into a perpetual agreement with the Union Pacific Railway Company granting to it certain perpetual rights, privileges and easements, and also agreeing with it for the interchange of business, in consideration whereof the Union Pacific Railway Company guaranteed the obligations of the Oregon Short Line and Utah Northern Railway Company, as hereinafter more fully stated. By the provisions of said lease and traffic agreements, and by reason of ownership of stock, the railroad of the said Oregon Railway and Navigation Company is controlled and operated by the Union Pacific Railway Company as part of its system of railroads. The said lease of the Oregon Railway
5791 and Navigation Company to the said Oregon Short Line Railway Company includes the railroads of the Oregon Extension Company, situated in the States of Washington and Oregon, 68.73 miles in length, which was itself leased to the Oregon Railway and Navigation Company on January 8th, 1890, for a term of ninety-seven years. The said lease of the said Oregon Railway and Navigation Company to the Oregon Short Line Company also covered the railroad of the Washington and Idaho Railroad Company, situated in the States of Washington and Idaho, 154.21 miles in length, which was itself leased to the Oregon Railway and Navigation Company on January 8th, 1890, for the term of ninety-seven years, and said last two mentioned railroads are in the possession of and controlled and operated by the Union Pacific Railway Company as a part of its system as hereinbefore stated.

Also the railroad of the Cascade Railroad Company, situated in the State of Washington, six miles in length. This road is operated under a lease to the Oregon Railway and Navigation Company, which

said lease was assigned to the Oregon Short Line Railway Company on May 10th, 1887, of which last named company the Oregon Short Line and Utah Northern Railroad Company is successor by consolidation as hereinbefore stated.

Also the railroad of the Columbia and Palouse Railroad Company, 144.81 miles in length, situated in the States of Washington and Idaho. Said railroad is operated under a lease to the Oregon Railway and Navigation Company, which said lease was assigned to the Oregon Short Line Railway Company May 10th, 1887.

Also the narrow gauge railroad of the Mill Creek Flume and Manufacturing Company, 13.41 miles in length, situate in the State
5792 of Washington. This railroad is owned by the Oregon Railway and Navigation Company, and is subject to and operated under the terms of the lease from the said Oregon Railway and Navigation Company to the said Oregon Short Line and Utah Northern Railway Company, hereinbefore described.

Also the railroad of the Walla Walla and Columbia River Railroad Company, 35.52 miles in length, situate in the State of Washington. This road is held and operated under the lease to the Oregon Railway and Navigation Company, which said lease was assigned by the last named company to the Oregon Short Line Railway Company, on May 10th, 1887. All of which said railroads under lease, as hereinbefore stated, to the said Oregon Railway and Navigation Company are subject to the terms and conditions of the general lease, hereinbefore referred to, executed by the said Oregon Railway and Navigation Company to the said Oregon Short Line Company, and all of said roads are operated and controlled by the Union Pacific Railway Company by virtue of its ownership of the stock of the said Oregon Short Line and Utah and Northern Railway Company, as well also as by virtue of the said several leases and instruments hereinbefore more specifically described.

Also, the Northern Pacific Terminal Company of Oregon. The issued capital stock of this company is $3,000,000, divided into 30,000 shares. Nine shares are owned by directors, and the remainder is held by the Central Trust Company, of New York, in trust for the Oregon Railway and Navigation Company, the Northern Pacific Railroad Company and the Oregon and California Railroad Company, which said last-named company is operated and controlled by the Southern Pacific Railroad Company. This Terminal Com-
5793 pany has issued its fifty-year six per cent. first mortgage bonds, dated January 1st, 1882, to the amount of $3,600,000; and the said Oregon Railway and Navigation Company and the said Oregon Short Line and Utah Northern Railway Company have entered into an agreement with the other owners of the stock of the said Terminal Company by which the said Oregon Short Line and Utah Northern Railway Company as lessee of the Oregon Railway and Navigation Company is bound to pay its proportion of the interest and sinking fund charges on said bonds. The property of this Terminal Company is now occupied and used by the said Oregon Short Line and Utah

Northern Railway Company as lessee of the said Oregon Railway and Navigation Company under and by virtue of the terms of the leases and agreements hereinbefore more specifically referred to.

4. The railroad of the Union Pacific, Lincoln and Colorado Railway Company, 225.35 miles in length, in the State of Kansas. There is outstanding $1,997,800 of capital stock, all of which is owned by the defendant the Union Pacific Railway Company, and is held in pledge under the said trust indenture of September 4th, 1891. Said company has issued its first mortgage five per cent. bonds, due April 1st, 1918, the same being secured by a mortgage to the American Loan and Trust Company of Boston, trustee, dated August 1st, 1888, delivered November 7th, 1888, for $4,445,000. The American Loan and Trust Company, trustee for the benefit of the mortgage creditors of the Kansas Pacific Railway Company, holds $74,000 of said last-mentioned bonds, the balance of which are afloat. And by the terms of an agreement between the said Union Pacific, Lincoln and Colorado Railway Company and the Union Pacific Rail-
5794 way Company, dated August 1st, 1888, delivered November 7th, 1888, the first-named company agreed to work its railway as a continuous line with the Union Pacific Railway Company, the Union Pacific Railway Company entering into a reciprocal engagement to work its line as a continuous line with that of the Union Pacific, Lincoln and Colorado Railway Company; in consideration thereof, and of the other provisions of the said agreement, the Union Pacific Railway Company agreed in substance that the revenues of the said Union Pacific, Lincoln and Colorado Railway Company should be sufficient to meet the interest on the said first mortgage bonds. The Union Pacific Railway has guaranteed the payment of the principal and interest of $4,445,000 of the first mortgage bonds of the Union Pacific, Lincoln and Colorado Railway Company. It was further agreed that to secure the Union Pacific Railway Company against loss by reason of its compliance with the terms of said contract, the Union Pacific, Lincoln and Colorado Company should execute an indenture of mortgage of its railway and properties to the Union Pacific Railway Company, which last-named company it was covenanted should have the rights of a mortgagee in possession for its security and benefit; and it was further agreed that until such indenture should be executed the Union Pacific company might enter into the possession of the railroad of the Union Pacific, Lincoln and Colorado Company to the end that it might work the same as provided in the said agreement. Your orators allege on information and belief that the said mortgage was never made, but that the Union Pacific Company took possession of the railroads of the said Union Pacific, Lincoln and Colorado Railway Company, and is now in possession thereof, and has operated, and is still operating, the same.

5795 5. The railroad of the Kansas Central Railroad Company, situate in the State of Kansas, 169.49 miles in length. This company issued its capital stock to the amount of $1,348,000; it also

executed a first mortgage to Frederick L. Ames, trustee, dated April 22d, 1881, due April 1st, 1911, for $1,348,000. The Union Pacific Railway Company owns all the bonds of this company, excepting one bond of a thousand dollars, and owns $1,313,400 of the said capital stock. The bonds and stock thus owned by the Union Pacific Railway Company are held by the trustees under the trust indenture of September 4th, 1891.

6. The railroad of the Carbon Cut-Off Railway Company, situate in the state of Wyoming, 19.17 miles in length. This company issued its capital stock to the amount of $280,000, all of which is owned by the Union Pacific Railway Company, and of which $220,000 is held by the trustees under the trust indenture of September 4th, 1891. There is no funded debt.

7. The railroad of the Denver, Leadville and Gunnison Railway Company in the State of Colorado, 324.72 miles. This company issued capital stock of $3,000,000, and also executed its first mortgage, dated August 1st, 1889, to the American Loan and Trust Company of Boston, trustee, to secure $2,308,000, four and one-half per cent. bonds. The Union Pacific Railway Company owns all of the stock of this company, which is held by the trustees under the trust indenture of September 4th, 1891. It also owns all of the said first mortgage bonds of said company, of which $2,262,000 are held in the Union Pacific Railway Company's four and one-half per cent. collateral trust as security for $2,037,000 of the Union Pacific Rail-
5796 way Company's collateral trust four and one-half per cent. bonds, $23,000 of said bonds are held by the trustees under the trust indenture of September 4th, 1891.

8. The railroad of the Echo and Park City Railway Company, situate in the Territory of Utah, 30.10 miles in length. This company issued capital stock to the amount of $480,000, also its first mortgage six per cent. bonds, dated July 1st, 1881, due July 1st, 1911, secured by mortgage to Peter B. Wyckoff and James M. Ham, trustees. The Union Pacific Railway Company owns the entire capital stock and all the bonds of this company, all of which stock and bonds are held by the trustees under the trust indenture of September 4th, 1891.

9. The railroad of the Junction City and Fort Kearney Railway Company, in the State of Kansas, 88 miles in length. This company issued capital stock of $1,056,100; also its first mortgage seven per cent. bonds, dated April 1st, 1873, due April 1st, 1903, to Adolphus Meier and Lewis H. Meyer, trustees, for $970,000; also, its first mortgage branch five per cent. bonds, dated September 1st, 1884, due December 1st, 1902, to the American Loan and Trust Company, of Boston, trustee, for $171,000. The Union Pacific Railway Company owns $764,000 of the capital stock of this company, of which $720,000 is held by the trustees of the Kansas Pacific consolidated mortgage of May 1st, 1879, and the balance is held by the trustees under the trust indenture of September 4th, 1891. The said seven per cent. bonds are all held by the said Kansas Pacific consolidated

mortgage trustees. The said American Loan and Trust Company, trustee, holds the entire issue of the five per cent. bonds in the sinking fund for the further security of mortgage creditors of the
5797 Kansas Pacific Railway Company.

10. The railroad of the Laramie, North Park and Pacific Railroad and Telegraph Company, situate in the State of Wyoming, 13.36 miles in length. This company issued capital stock of $66,500. It has no funded debt. The Union Pacific Railway Company owns the entire capital stock of said company, which is held by the trustees under the trust indenture of September 4th, 1891.

11. The railroad of the Salina and Southwestern Railway Company, situate in the State of Kansas, 35.47 miles in length. This company issued its capital stock for $288,400; also its first mortgage six per cent bonds dated January 25th, 1882, due January 1st, 1912, to John F. Dillon and Peter B. Wyckoff, trustees, for $540,000, all of which bonds are held by the trustees of the Kansas Pacific Consolidated Mortgage of May 1st, 1879. Of the said capital stock the Union Pacific Railway Company owns $231,700, which is held by the trustees under the said trust indenture of September 4th, 1891.

12. The railroad of the Solomon Railroad Company, situate in the State of Kansas, 57.04 miles. This company issued capital stock of $1,108,850; also, its first mortgage six per cent. bonds, dated May 1st, 1878, due May 1st, 1908, to C. S. Greeley, trustee, for $575,000. Of the said capital stock, $1,000,500 is held in the said trust of Kansas Pacific Consolidated Mortgage of May 1st, 1879, and all of its first mortgage six per cent. bonds.

13. The railroad of the St. Joseph and Grand Island Railroad Company, situated in the States of Missouri, Kansas and Nebraska, extending from St. Joseph, Missouri, to Grand Island,
5798 251.06 miles. This company issued capital stock to the amount of $4,551,100; also first mortgage six per cent. bonds, dated July 1st, 1885, due May 1st, 1925, to the Central Trust Company of New York, trustee, for $6,998,000; also, its second mortgage five per cent. income bonds, dated July 1st, 1885, due July 1st, 1925, to J. H. Benedict, Isaac H. Bromley and F. K. Pendleton, trustees, for $1,679,000. The Union Pacific Railway Company owns $2,301,500 of the capital stock of this company, which is held by the trustees under the trust indenture of September 4th, 1891. The St. Joseph and Grand Island Company owns $1,822,500 of the capital stock of the Kansas City and Omaha Railroad Company, hereinafter referred to; also $125,000 of the St. Joseph Terminal Railroad Company's stock, and also $1,000 in the St. Joseph Union Depot Company's stock, each of which said companies is hereinafter more specifically referred to.

The railroad of the Kansas City and Omaha Railroad Company, promoted by and connecting with the St. Joseph and Grand Island Railroad, situate in the State of Nebraska, 193.68 miles in length. This company issued capital stock of $4,408,100; also issued its first mortgage five per cent. bonds, dated January 1st, 1887, due Janu-

ary 1st, 1927, to the Central Trust Company of New York, trustee, for $2,713,000. The Union Pacific Railway Company owns $1,595,500 of said bonds and $1,725,375 of the said stock, and the St. Joseph and Grand Island Railway Company owns $1,822,500 of the said stock. The bonds and stock owned by the Union Pacific Railway Company are held by the trustees under the trust indenture of September 4th, 1891. On the 1st day of July, 1885, the St. Joseph and Grand Island Railroad Company entered into a contract with the
5799 Union Pacific Railway Company, and on the 1st day of January, 1887, the Kansas City and Omaha Railroad Company, of the first part, the St. Joseph and Grand Island Railroad Company, of the second part, and the Union Pacific Railway Company, of the third part, entered into a contract; and by the terms and provisions of the said two last-mentioned contracts, the respective railroads of the said companies were to be operated in connection with the Union Pacific and as a part of its system, and certain rights and privileges were granted to the Union Pacific Railway Company. The said Union Pacific Railway Company, in consideration thereof, endorsed the first mortgage bonds of the St. Joseph and Grand Island Railroad Company substantially as follows: "The Union Pacific Railway Company hereby guarantees the punctual payment of the interest hereon (meaning the said bonds), subject only to the conditions of an agreement made with the St. Joseph and Grand Island Railroad Company, dated July 1st, 1885." Under the provisions of said contract—January 1st, 1887—the Union Pacific Railway Company and the St. Joseph and Grand Island Railroad Company jointly and severally guaranteed the punctual payment of the interest on the first mortgage bonds of the said Kansas City and Omaha Railroad Company, subject only to the conditions of the said agreement dated January 1st, 1887. Under and by virtue of the terms of the said two contracts and the consent of the said two last-named companies and the holders of said stock, the said Union Pacific Railway Company is in the possession and operation of each of the said railroads.

14. The Union Pacific Railway Company operates the railroad formerly belonging to the Denver and Boulder Valley Rail-
5800 road Company, situated in the State of Colorado, 26.97 miles in length, for the trustees of the Kansas Pacific Consolidated Mortgage of May 1st, 1879, said trustees holding the title to said railroad subject to the trusts of the said indenture of May 1, 1879.

15. The railroad of the Lawrence and Emporia Railway Company of Kansas, thirty-one miles in length. The Union Pacific Railway Company owns the entire capital stock of this company, $465,000, which is held by the trustees under the trust indenture of September 4th, 1891. This company issued first mortgage six per cent. bonds, dated January 25th, 1882, due January 1st, 1912, to John F. Dillon and Peter B. Wyckoff, for $465,000, all of which mortgage bonds are held by the trustees of the Kansas Pacific Consolidated Mortgage of May 1st, 1879, subject to the provisions of the said trust. The railway of this company is leased for a term of 99 years to the Law-

rence, Emporia and Southwestern Railway Company at an annual rental of $1,000 and taxes.

16. The railroad of the Montana Union Railway Company, in the State of Montana, 72.23 miles in length. This road connects the Union Pacific with the Northern Pacific, and is operated under a joint traffic arrangement between the Union Pacific Railway Company and the Northern Pacific Railway Company. This company has issued $850,000 of capital stock. The Union Pacific owns $425,000. There is no funded debt. The stock owned by the Union Pacific Railway Company is held by the trustees under the trust indenture of September 4th, 1891. Part of the system of the Montana Union Railway Company consists of the Montana Railway Company in Montana, 14.83 miles, of which the Union Pacific
5801 Railway Company owns the entire capital stock, consisting of $600,000, of which seventy per cent. has been paid, amounting to $420,000. This stock is held by the trustees under the trust indenture of September 4th, 1891. There is no funded debt. The lease of the Montana Railway Company is for an annual rental equal to six per cent. on the value of the demised premises. The Oregon Short Line and Utah Northern Railway Company has leased to the said Montana Union Railway Company 57.41 miles of railroad on the same terms.

17. The railroad of the Leavenworth, Topeka and Southwestern Railway Company of Kansas, 46.57 miles in length. The Union Pacific Railway Company and the Atchison, Topeka and Santa Fe Railroad Company, are equally interested in the stock of this company, whereof $1,380,000 has been issued, each of those companies owning $550,900 of stock therein. Said company issued its first mortgage four per cent. bonds, dated July 1st, 1882, due July 1st, 1912, to the American Loan and Trust Company of Boston, trustee, for $1,380,000. These mortgage bonds are held by the public, but the payment of the interest on one-half of the said issue has been endorsed or guaranteed by the Union Pacific Railway Company.

18. The railroad of the Manhattan, Alma and Burlingame Railway Company of Kansas, 56.62 miles in length. This company issued its capital stock for $1,000,000; also its first mortgage six per cent. bonds, dated July 1st, 1880, due July 1st, 1910, to Frederick L. Ames and S. Lothrop Thorndike, trustees, for $678,000. The Union Pacific Railway Company and the Atchison, Topeka and Santa Fe Railroad Company each owns $418,650 of said capital stock
5802 and $339,000 of the first mortgage six per cent. bonds. The bonds owned by the Union Pacific Railway Company are held by the trustees under the trust indenture of September 4th, 1891.

19. Also, the railroad of the Central Branch, Union Pacific Railroad Company, situated in the State of Kansas, 100 miles, from Atchison to Waterville; also, its leased lines, to-wit, the railroad of the Atchison, Colorado and Pacific Railroad Company, situated in the State of Kansas, 254.79; also, the railroad of the Atchison, Jewell County and Western Railroad Company, situated in Kansas,

33.40 miles. The said Central Branch Company issued its capital stock for $1,000,000; also, its first mortgage six per cent. bonds, dated May 1st, 1865, to Henry Day and Oliver Ames, trustees, for $1,600,000; also, its funded interest seven per cent. bonds, dated May 1st, 1865, due May 1st, 1895, to the same trustees last mentioned, for $630,000. It received United States subsidy bonds to the amount of $1,600,000, yet unpaid, on which a large amount of interest will become due, less amounts repaid and to be repaid by transportation or otherwise. The Atchison, Colorado and Pacific Railway Company issued capital stock to the amount of $1,522,400; also its first mortgage six per cent. bonds, dated December 24, 1879, due May 1st, 1905, to Henry Day and Oliver Ames, trustees, for $4,070,000. The Union Pacific Railway Company owns $920,300 of the capital stock of this company, which is held by the trustees under the trust indenture of September 4th, 1891. The Atchison, Jewell County and Western Railroad Company issued its capital stock for $202,800; also, its first
mortgage six per cent. bonds, dated May 1st, 1879, due May
5803 1st, 1905, to Henry Day and Oliver Ames, trustees, for $542,-
000. The Union Pacific Railway Company owns $105,000 of the capital stock of this company, which is held by the trustees under the trust indenture of September 4th, 1891. The Union Pacific Railway Company owns $874,200 of the capital stock of the said Central Branch of the Union Pacific Railroad Company, which is held by the trustees under the trust indenture of September 4th, 1891. The railroad of the Central Branch Union Pacific Railroad Company, including the said two leased lines above mentioned, was leased to the Missouri Pacific Railway Company September 30th, 1885, for twenty-five years; the lessee company, as rental, to account to the lessor company for net earnings. The said Central Branch Company owns nine shares of $1,000 each of the stock of the Atchison Union Depot and Railroad Company.

20. The defendant is also the owner of the property and capital stock, or is interested in the property and capital stock, through its auxiliary companies, of the following named corporations:

The Atchison Union Depot and Railroad Company, the property of which is located in the city of Atchison, in the State of Kansas.

The Boulder Valley and Central City Wagon Road Company, the property of which is situated in the State of Colorado.

The Bozeman Coal Company, an incorporation of the State of Montana, owning certain coal mines and mining properties therein.

The Callaway Improvement Company, a corporation of the State of Nebraska, owning property and doing business therein.

The Colorado Western Railroad Company, a corporation of
5804 the State of Colorado, which has entered upon the preliminary
work of the construction of a railroad therein.

The Denver Union Railway and Terminal Company, a corporation of the State of Colorado, which has entered upon the preliminary work of the construction of a terminal plant in the City of Denver.

The Deseret Salt Company, a corporation of the Territory of Utah, owning property and carrying on business therein. The Echo and Park City Railway Company, a corporation of the Territory of Utah, owning a railway therein.

The Fort Worth and Denver City Railway Company, a corporation of the State of Texas, owning a railway line therein.

The Fort Worth and Denver Terminal Railway Company, a corporation of the State of Texas, owning a terminal plant in the City of Fort Worth.

The Green River Water Works Company, a corporation of the State of Wyoming, owning the water plant and engaged in operating the same in said State of Wyoming. The capital stock of said company issued and outstanding is $225,000; the first mortgage bonds issued and outstanding $221,000, dated January 1st, 1889, due January 1st, 1919, interest six per cent.: the trustee of the said mortgage securities is the American Loan and Trust Company of Boston. The Union Pacific Railway Company owns all of the stock and bonds of this company, which are held by the trustees under the trust indenture of September 4th, 1891.

The Kearney and Black Hills Railway Company, a corporation of the State of Nebraska, owning a line of railroad therein. The capital stock issued is $931,606.91; first mortgage bonds issued and outstanding $887,000, dated May 1st, 1890, due May 1st, 5805 1920, interest five per cent.: the trustee of said mortgage securities is the American Loan and Trust Company of Boston. The Union Pacific is the owner of $838,141.91 of said stock and $369,325 of said bonds, of which $337,966 of the stock and $105,000 of the bonds are held by the trustees under the trust indenture of September 4th, 1891.

The Leavenworth Depot and Railroad Company, an incorporation of the State of Kansas, having a capital stock issued and outstanding of $150,000, and first mortgage bonds issued $150,000. The company owns and operates a depot and terminal plant in the City of Leavenworth, in said State. The Union Pacific Railway Company is the owner of one-fourth of the capital stock therein, and owns and holds $63,000 of the said first mortgage bonds. The Kansas Central Railway Company, hereinbefore referred to, also owns $35,000 of the stock of said Leavenworth Depot and Railroad Company.

The Loveland Pass Mining and Railroad Tunnel Company, an incorporation of the State of Colorado, engaged in mining and tunneling therein.

The Mammoth Mining Company, an incorporation of the Territory of Utah, engaged in business therein.

The Morrison Stone, Lime and Town Company, a corporation of the State of Colorado, doing business therein.

The Occidental and Oriental Steamship Company, a corporation of the State of California, engaged in steam navigation. The capital stock of said company is $10,000,000, on which three per cent. has

been paid in. The Union Pacific Railway Company owns one-
half of the said stock, which is held by the trustees under the
5806 trust indenture of September 4th, 1891.

The Ogden Union Railway and Depot Company, a corporation of the Territory of Utah, owning and operating a union depot and terminal plant in the City of Ogden. The authorized stock of this company is $300,000, and the authorized issue of the first mortgage bonds is limited to $1,000,000, dated September 1st, 1888, due September 1st, 1918, interest at five per cent. The trustee of said mortgage bonds is the American Loan and Trust Company, of Boston. The capital stock of this company, as issued, is to go one-half to the Union Pacific Railway Company and one-half to the Central Pacific Railroad Company. The Union Pacific Railway Company owns $163,000 of the first mortgage bonds, which are held by the trustees under the trust indenture of September 4th, 1891. The said Union Pacific Railway Company is interested in the management and operation of the Union Depot and Terminal plant to the extent of one-half of the whole interest therein.

The Omaha Union Depot Company, a corporation of the State of Nebraska, engaged in the construction and proposed maintenance and operation of a union depot and terminal plant in the City of Omaha. The authorized capital stock of said company is $1,500,000, on which subscriptions to the amount of $15,000 have been made, one-half by the Chicago, Burlington and Quincy Railroad Company, and one-half by the Union Pacific Railway Company. The stock issued to and owned by the Union Pacific Railway Company is held by the trustees under the trust indenture of September 4th, 1891. This company was incorporated by the joint action of the said two last-named railway companies, and considerable real estate and other valuable
rights have been acquired by it.

5807 The Pacific Express Company, incorporated under the laws of Nebraska, and engaged in a general express business on the railway lines of the United States. The capital stock of said company is $6,000,000, of which the Union Pacific Railway Company owns $2,400,000, which is held by the trustees under the trust indenture of September 4th, 1891.

The Portland and Puget Sound Railway Company, incorporated under the laws of Oregon, which said railroad company has entered upon the construction of a railroad line in the States of Oregon and Washington.

The Pueblo Union Depot and Railroad Company, incorporated under the laws of the State of Colorado, which owns and operates a union depot and terminal plant at Pueblo, in which said company the Union Pacific, Denver and Gulf Railway Company, hereinbefore referred to, has a valuable interest.

The Rattle Snake Water Company, incorporated under the laws of Wyoming, and owning and operating a water plant therein. There has been issued of the capital stock of the said company, $78,300;

there has also been issued and is outstanding $156,000 of the first mortgage bonds of said company, dated July 1st, 1890, due July 1st, 1920, at six per cent., to the American Loan and Trust Company of Boston, trustee. All of said stock and all of said bonds so issued are owned by the Union Pacific Railway Company. Of the stock and bonds thus owned $66,300 in stock and $132,000 in bonds are held by the trustees under the trust indenture of September 4th, 1891.

The St. Joseph Terminal Railroad Company, incorporated under the laws of Missouri. This company owns and operates a
5808 union freight depot and facilities, machine shops and terminal station in the City of St. Joseph. There has been issued of its capital stock $300,000, one-half of which is owned by the St. Joseph and St. Louis Railroad Company, $125,000 by the St. Joseph and Grand Island Railroad Company, and $25,000 by the Union Pacific Railway Company. This terminal company has also issued $350,000 of its first mortgage bonds, dated August 1st, 1888, due August 1st, 1918, at five per cent., to the Boston Safe Deposit and Trust Company, trustee. The stock owned by the Union Pacific Railway Company is held by the trustees under the trust indenture of September 4th, 1891.

The St. Joseph Union Depot Company, incorporated under the laws of Missouri. This company owns and operates a passenger depot and terminal plant at St. Joseph. It has issued capital stock to the amount of $9,000, in which the St. Joseph and Grand Island Company has a one-ninth interest. This company has also issued $110,000 of its first mortgage bonds, dated January 1st, 1881, due January 1st, 1906, interest at six per cent. These bonds are outstanding.

The Tacoma and Lake City Railroad and Navigation Company, incorporated under the laws of Washington. This company owns and operates a line of railroad from Tacoma to Lake City, 11.10 miles.

The Tintic Iron Company, incorporated under the laws of Utah, and engaged in the business of mining therein.

The Union Depot and Railroad Company, of Denver, incorporated under the laws of the State of Colorado. This company owns and operates a union depot and terminal plant in the said City of Den-
ver. It was organized and is maintained in the interest of
5809 the Union Pacific Railway Company, the Union Pacific, Denver and Gulf Railway Company, and the Denver and Rio Grande Railway Company. Its capital stock is $400,000. This company issued its first mortgage bonds in the sum of $300,000, dated February 20th, 1880, due September 1st, 1899, seven per cent, to George W. Clayton and David C. Dodge, trustees. Of the capital stock the Union Pacific Railway Company owns $240,000, and the Union Pacific, Denver and Gulf Railway Company $80,000.

The Union Depot Company of Kansas City, Missouri, incorporated under the laws of Missouri. This company owns and operates

a union depot and terminal plant at the city of Kansas City. It has issued capital stock to the amount of $210,000; it has also issued its first mortgage bond in the sum of $109,000, dated July 2d, 1887, due July 1st, 1899, at eight per cent, to George H. Nettleton, G. W. Weld, and C. F. Adams, jr., trustees. Of the capital stock the Union Pacific Railway Company owns $21,000, which is held by the trustees under the trust indenture of September 4th, 1891.

The Union Depot Company of Spokane Falls, incorporated under the laws of Washington. This company owns and operates a union depot and terminal plant at Spokane Falls in said State of Washington. This company has issued capital stock in the sum of $5,000; it has also issued its first mortgage gold bonds in the sum of $400,000, dated October 1st, 1889, due July 1st, 1919, at five per cent, to the American Loan and Trust Company, of Boston, trustee. Of the capital stock issued one-half is owned by the Seattle, Lake Shore and Eastern Railroad Company, and one-half by the Washington and Idaho Railroad Company; the ownership of which said stock by the Washington and Idaho Railroad Company places the
5810 one-half interest in this terminal property under the leases and agreements of the Oregon Railway and Navigation Company to and with the Oregon Short Line and Utah Northern Railway Company, hereinbefore referred to.

The Union Elevator Company, incorporated under the laws of Iowa, and owning an elevator plant in the City of Council Bluffs, in said State. This company has issued its capital stock in the sum of $280,000. It was organized and is owned for the equal joint benefit of the Chicago, Burlington and Quincy Railroad Company, the Chicago, Milwaukee and St. Paul Railway Company, the Wabash Railroad Company, the Chicago, Rock Island and Pacific Railway Company, the Chicago and Northwestern Railway Company, and the Union Pacific Railway Company.

The Union Elevator Company of Omaha, incorporated under the laws of Nebraska. The capital stock of this company is $135,000, of which the Union Pacific Railway Company owns $81,000, which said stock so owned by the Union Pacific Company is held by the trustees under the trust indenture of September 4th, 1891.

The Union Land Company, incorporated under the laws of Nebraska and engaged in general land business.

The Utah Lime and Cement Company, incorporated under the laws of Utah and engaged in business in the said Territory. This company has issued its capital stock in the sum of $150,000, of which the Oregon Short Line and Utah Northern Railway Company owns $25,000.

The Union Pacific Coal Company, incorporated under the laws of the State of Wyoming, engaged in a general coal mining and sales business in said State and other States adjacent thereto.
5811 The authorized capital stock of this company is $20,000,000, and it has issued of its stock $5,000,000; it has also issued its

first mortgage bonds in the sum of $5,000,000, dated May 1st, 1891, due May 1st, 1921, at five per cent, to the Union Trust Company of New York, trustee. The Union Pacific Railway Company is the owner of $4,437,000 of the capital stock of said company, and of $4,438,000 of the said first mortgage bonds of said company, which said stock and said bonds were received in payment and satisfaction for coal lands and properties conveyed by the said Union Pacific Railway Company to said Union Pacific Coal Company. All of said stock and bonds are now held by the trustees under the trust indenture of September 4th, 1891. The Union Pacific Railway Company also hold as collateral $512,000 of the said first mortgage bonds and $562,000 of the said capital stock of said Union Pacific Coal Company, all of which has been by it placed under the said trust indenture of September 4th, 1891; authority so to place said stock and bonds under the said trust indenture of September 4th, 1891, having been duly given to said Union Pacific Railway Company by the owners of the said stock and bonds.

The Willamette Transportation and Locks Company, a corporation of the State of Oregon, doing business in said State.

The Wood River Improvement Company, incorporated under the laws of Nebraska for the purpose of railway construction and land operations. This company has issued its capital stock in the sum of $400,000, of which the Union Pacific Railway Company owns $356,500, of which $100,000 are held by the trustees under the trust indenture of September 4th, 1891.

That all of said lines of railroads, telegraph lines, and
5812 property above or herein described or referred to, including the lines of railroad and properties of each of the defendants, have been, and are now being operated by or for or in the interest of the defendant the Union Pacific Railway Company as a unit, forming one vast railway and water system known as the Union Pacific System, the maintenance of every part of which is essential to the profitable operation of the remainder, and that it is engaged in the transportation of freight and passengers and in carrying the troops, mails, and property of the United States over the said lines of railroad and in performing all the duties of a common carrier.

Fifth. Your orators further allege that in addition to the foregoing railways and other properties, and among the most important assets of the said defendant, are large tracts of land situated in each of the States of Iowa, Nebraska, Missouri, Kansas, Colorado, Wyoming, Montana, Idaho, Washington and Oregon, and in the Territory of Utah, which became the property of the defendant The Union Pacific Railway Company, by virtue of said acts of the Congress of the United States or by grants from municipalities and individuals to the said defendant from time to time. That said lands so granted to the defendant or to its predecessors in title by Congress amounted to several millions of acres, of which the defendant has sold a large portion, and is now seized and possessed of the remainder, certain of

which granted lands are subject to the liens of certain of the mortgages hereinafter mentioned, and all of which are subject to the liens of certain other of said mortgages, as hereinafter stated; and the titles of the lands so as aforesaid granted to the said defendant by municipalities and individuals are vested in individuals and
5813 corporations who hold the same in trust for the said Union Pacific Railway Company.

Your orators further allege that the defendant, The Union Pacific Railway Company, has a capital stock divided into shares of $100 each, now outstanding, consisting of $60,868,500 of stock.

Sixth. Your orators show that on the 26th of April, 1893, the said Union Pacific Railway Company presented to its stockholders at its annual meeting, held on said day, a statement of the funded or bonded debt of said company, which said statement showed that said company, on December 31, 1892, had outstanding bonds and notes to the amount of $97,682,735, of which $85,492,735 were afloat and in the hands of the public at that date. A copy of said statement is annexed to this bill of complaint as part thereof, and marked "Exhibit A." Your orators aver that, at the date of the filing of this bill, the funded or bonded debt of the said company, as shown in said Exhibit A, remains substantially the same as on the 31st day of December, 1892; and your orators aver on information that said statement is substantially correct, but the same does not include the subsidy indebtedness of the company to the United States.

The United States, under the Acts of Congress hereinbefore mentioned, issued its bonds to the Union Pacific Railroad Company for $27,236,513; to the Kansas Pacific Railway Company to the amount of $6,303,000.

Which indebtedness will mature in installments as follows:

November 1st, 1895	$640,000
January 1st, 1896	1,440,000
February 1st, 1896	4,320,000
5814 January 1st, 1897	6,440,000
January 1st, 1898	17,342,512
January 1st, 1899	3,157,000
Total	$33,539,512

There will be due at said times to the United States the balance of accrued interest on said subsidy bonds, amounting to a large sum of money, less transportation services and payments on account, which balance, amounting now to about $18,000,000 in addition to the principal, may be increased very considerably by the time said subsidy debt falls due.

Your orators aver that the said report presented by the directors to the stockholders at the annual meeting on April 26, 1893, stated the liabilities, including capital stock and surplus, on December 31, 1892, of the Union Pacific Railway Company as follows:

LIABILITIES.

Capital stock		$60,858,500.00
Funded debt		85,492,185.00
United States six per cent currency bonds		33,529,512.00
Interest on United States bonds, balance of, sinking fund deducted		17,784,764.48
Interest accrued not yet due		877,799.27
Bonds and stock owned by auxiliary companies held by this company as collateral (see assets)		7,542,345.98
Income accounts:		
General income	$12,356,838.24	
Income used for sinking funds	7,751,448.31	
Land and trust income	24,575,917.27	
	$44,694,203.82	
Less deficit of United States requirements and accumulations of the sinking fund as compared with accrued interest on United States bonds February 1, 1880, to date	5,368,268.63	
		39,325,935.19
		$245,431,041.92

5815 Your orators allege that the funded debt of the said company, aside from said subsidy debt, is secured by mortgages or instruments referred to in Exhibit A, which said exhibit shows the names of the trustees, the date when the interest is payable, and the amount of bonds outstanding and in the hands of the public, which amount, on the 31st day of December, 1892, was $85,492,185, not including the said subsidy debt to the Government, and interest accrued thereon.

Referring to said Exhibit A and to the indentures and instruments therein mentioned, your orators say that the said first mortgage of the Union Pacific Railroad Company to Ames and Dexter, as trustees, therein mentioned is dated November 1, 1865, and secures bonds of the Union Pacific Railroad Company, secured by mortgage from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms of the provisions of the said Acts of Congress, to-wit, from said City of Omaha in the former Territory, now State of Nebraska, to Ogden, together with all its lands, tenements, hereditaments, rights of way and easements acquired or procured for right of way and telegraph lines and for depots, engine houses, car houses, station houses, warehouses, machine shops, super-structures, erections and fixtures; also, all and singular the franchises owned, possessed or acquired by the said Union Pacific Railroad Company for the purpose of building and operating said railroad and telegraph, and also all the rails, depots, yards, engine houses, car houses, station houses, warehouses, machine shops, workshops and fixtures of said railroad company, and also all goods and chattels owned or thereafter to be owned or acquired

5816 by said company necessary to said railroad and telegraph line or to the running and operating of the same. Said mortgage shall be due in 1896 to 1899. The total amount of outstanding bonds secured thereby is $27,299,000.

The sinking fund mortgage to the Union Trust Company, mentioned in Exhibit A, is dated the 18th day of December, 1873. The

bonds issued and outstanding thereunder on December 31st, 1892, were $5,176,000; the principal thereof, together with an installment of interest, matured on the 1st day of September, 1893. Your orators aver that an instrument providing for an extension of certain of said bonds issued under said sinking fund mortgage was executed by the Union Pacific Railway Company, wherein and whereby it was provided that such of the holders of said bonds, as desired, might have the time of final payment extended for the further term of six years from the said first day of September, 1893, and interest coupons were duly prepared and executed by the said Union Pacific Railway Company, the successor by consolidation of the said Union Pacific Railroad Company, the original obligors named in said bonds, said interest coupons being at the rate of eight per cent., payable semi-annually in gold coin of the United States. By the terms of the indenture of mortgage securing the said debt the same is a lien upon the right, title, estate and interest of the Union Pacific Railroad Company in and to the railroad of said company and its appurtenances mentioned in the said indenture of mortgage, together with all the lands, tenements, hereditaments and rights of way of the said railroad company, superstructures, all fixtures, and all and singular the lands granted
to the Union Pacific Railroad by the said Act of Congress of
5817 July 1st, 1862, and its amendments, and also the goods and
chattels owned or to be acquired by the said Union Pacific Railroad Company, or convenient to the said railroad or its operation, or used or employed in connection therewith.

The Omaha bridge bonds mentioned in said Exhibit A are secured by a trust indenture to Morgan, Ames & Atkins, which indenture is dated the 27th of September, 1871, and the principal thereof will fall due on the first day of April, 1896. The Union Pacific Railway Company subsequently, and on the 1st day of October, 1885, executed to the Central Trust Company an indenture mortgaging the said bridge to secure the Omaha Bridge renewal bonds mentioned in Exhibit "A," of which there were outstanding on the 31st of December, 1892, $889,000.

The collateral trust six per cent. indenture to the Union Trust Company of New York, mentioned in Exhibit A, is dated the first day of July, 1879. The number of Union Pacific bonds outstanding on December 31st, 1892, and secured thereby is $3,775,000. The property mortgaged and pledged in said collateral indenture to secure the said bonds of the Union Pacific Railroad Company consists of certain bonds which the Union Pacific Company owns of the Colorado Central Railroad Company, now one of the constituents of the Union Pacific, Denver and Gulf Railroad Company; also, certain bonds of the Omaha and Republican Valley Railroad Company, now one of the constituents of the aforesaid mentioned Omaha and Republican Valley Railway Company; also, certain mortgage bonds owned by the Union Pacific Company of the Utah and Northern Railway Company, said last-mentioned company being one of the constituent companies of the said Oregon Short Line and Utah Northern

5818 Railroad Company consolidated as above mentioned. Said collateral trust indenture provides in substance, that whenever the Union Pacific bonds or the interest thereon are not paid that the trustee may sell the underlying bonds by advertisement in one or more newspapers published in the cities of Boston and New York.

The Eastern Division bonds, being bonds of the Kansas Pacific Railway Company, mentioned in said Exhibit A, are secured by a mortgage dated the 1st day of August, 1865, to Henry M. Alexander, now the surviving trustee, and is a first lien on the railroad formerly of the Kansas Pacific Railroad Company from its initial point at Wyandotte, in the State of Kansas, for 140 miles, but does not cover the land grant. $2,240,000 are unpaid and outstanding under the said indenture.

The Middle Division bonds mentioned in said Exhibit A are secured by a mortgage dated the first day of June, 1866, Adolphus Meyer being now the surviving trustee. This mortgage covers the railroad formerly belonging to the Kansas Pacific from the 140-mile post to a point west of the 100th meridian, to which the grant of bonds of the United States extends by virtue of the Acts of Congress in that behalf, which your orators aver, on information and belief to be about 394 miles from the initial point. This mortgage does not cover the land grant. There were on December 31st, 1892, and are now, $4,063,000 of outstanding bonds secured by the said mortgage.

The Denver Extension Bonds, mentioned in said Exhibit A, are secured by a mortgage indenture to Stewart, Endicott and Rutten, present trustees, which mortgage indenture is dated the 20th of June, 1869. This indenture covers the railroad which was owned by
5819 the Kansas Pacific Company, from the Missouri River to Denver, together with that company's right, title and interest in 3,000,000 acres of land, to which under the Acts of Congress it became entitled. It recites that it is a first lien on 236 miles of road and about 3,000,000 acres of land, and a lien upon the remaining 477 miles of railroad, subject to prior liens and to the subsidy obligations to the United States Government. Your orators allege that there are outstanding bonds secured by the said mortgage to the amount of $5,887,000. $600,000 of the Leavenworth Branch bonds are also outstanding as stated in the said Exhibit A.

The Consolidated mortgage bonds mentioned in said Exhibit A are secured by an indenture, dated the 1st day of May, 1879, executed by the Kansas Pacific Railway Company to Jay Gould and Russell Sage as trustees. Jay Gould having subsequently died, George J. Gould duly became the successor trustee. This mortgage covers the entire railroad of the Kansas Pacific from its initial point to the City of Denver. It also covers and embraces all the lands granted by the acts of Congress to aid in the construction of the Kansas Pacific Railway Company. It also covers various stocks and bonds of other and connecting railway companies mentioned and specified in a schedule annexed to the said indenture. The interest on

said mortgage is payable semi-annually in May and November. On the 31st day of December, 1892, there were, and still are, outstanding bonds secured by the said mortgage amounting in the aggregate to $11,720,000.

The Cheyenne Branch bonds mentioned in the said Exhibit A, secured by mortgage to Gould and Sage, trustees, is a mortgage which was executed by the Denver Pacific Railroad and Tele-
5820 graph Company, dated the 10th day of August, 1869, said mortgagor company being one of the companies which formed, by the union and consolidation of January 24th, 1880, the Union Pacific Railway Company. Gould and Sage, as trustees under the Kansas Pacific Consolidated Mortgage of May 1st, 1879, for the security of the bondholders of said last mentioned mortgage, own and hold $971,000 of the bonds executed by the Denver Pacific Railroad and Telegraph Company secured by the said indenture, dated August 10th, 1869.

The trust five per cent. bonds mentioned in Exhibit A, under which the New England Trust Company, of Boston, is trustee, are secured by an indenture executed by the Union Pacific Railway Company to said trust company, trustee, dated April 2d, 1883. The Union Pacific Railway Company issued, and there are outstanding, secured by the said indenture, the bonds of the Union Pacific Railway Company to the amount of $4,790,000. These bonds are secured by a pledge to the said trustee of bonds of the said Colorado Central Railroad Company, bonds of the Omaha and Republican Valley Railroad Company, bonds of the Omaha and Republican Valley Railway Company, bonds of the Utah Southern Railroad Extension Company, and bonds of the Utah and Northern Railway Company, with provision in case of default the same as in the collateral trust indenture before mentioned, with power in case of default on the part of the Union Pacific Railway Company in the trustee to sell at auction the collaterals thus pledged.

The collateral trust four and one-half per cent. bonds to the New England Trust Company, trustee mentioned in said Exhibit A, is a like collateral trust instrument to the one just above described. It is dated the first day of August, 1889, and is secured by a
5821 pledge of bonds owned by the Union Pacific Railway Company, of the Denver, Leadville and Gunnison Railway Company. There have been issued, and are outstanding under the said indenture, $2,037,000 of bonds, all of which are held by the public, except $237,000 owned by the Union Pacific Railway Company, and pledged in the said trust indenture of September 4, 1891, as part security for the collateral trust six per cent. notes.

The equipment trust bonds, series A, B, and C, mentioned in the said Exhibit A, are outstanding, as therein shown. These indentures cover a very important and essential part of the equipment used on the entire system of the said road, and the provisions of the said indentures are such that, if default be made in the payment of the obligations of the railway company thereon, its right to enjoy the

said equipment ceases or is forfeited. Such equipment is essential to continuing the business of the company.

The collateral trust six per cent. notes secured by a trust indenture to Drexel, Morgan & Company, mentioned in said Exhibit A is the said trust indenture of September 4th, 1891, hereinbefore mentioned. The said trust indenture was executed by the Union Pacific Railway Company to Drexel, Morgan & Company of the City of New York, as trustees, to secure certain promissory notes of the railway company therein mentioned. The amount of such notes outstanding under this indenture on December 31, 1892, was the sum of $15,793,000 or thereabouts. Said notes are dated August 1st, 1891, and are payable three years after date thereof, to-wit: August 1, 1894, with interest semi-annually, payable February and August. The company, in and by
the said indenture, pledged certain bonds and stocks as security
5822 for the said notes. A schedule of the said bonds and stock thus
pledged is hereto annexed, marked "Exhibit B," the same being a transcript of Schedule A of the said trust indenture to Drexel, Morgan & Company. It is by virtue of these bonds and stocks that the Union Pacific Railway Company controls the great branch systems of railroads tributary to its main properties, and it is vitally essential to every interest of the said railway and its creditors that the said bonds and stocks, or a controlling portion thereof, shall be and remain the property of the Union Pacific Railway Company.

By the trust of the said indenture of September 4th, 1891, the Union Pacific Railway Company is the owner of said bonds and stocks now remaining in the said trust, and when the said debt secured by the said indenture, shall have been paid will become the unincumbered owner thereof, and while not in default, it is, by the provisions of said indenture, entitled to vote on the said shares at all corporate elections, and is thereby enabled to control the corporate organizations of the said company's auxiliary or connecting lines in the same manner as if the said pledge had not been made. All of the said notes will become due August 1, 1894. No other provision than such as exists in the said indenture has been made by the said company for the payment of said notes when they become due. By the provisions of said trust indenture, in case of default, the trustees are authorized to advertise and sell the underlying securities.

In addition to funded and other obligations hereinbefore mentioned,
or in said Exhibit A, the Union Pacific Railway Company is liable,
as indorser or guarantor, on the bonds, or the interest thereon,
5823 or the obligations, of the Omaha and Republican Valley Railway Company, Oregon Short Line and Utah Northern Railway Company, Oregon Railway and Navigation Company, St. Joseph and Grand Island Railroad Company, Kansas City and Omaha Railroad Company, Union Pacific, Denver and Gulf Railway Company, Union Pacific, Lincoln and Colorado Railway Company and other companies, and that the same will amount in the aggregate to many millions of dollars, the details whereof are unknown to your orators.

In addition to which the said Union Pacific Railway Company is also obligated, as guarantor or by contract provisions, to make good

the deficit in the revenues of several of its companies, constituting the said Union Pacific system from year to year, and your orators are informed and believe that the obligations so assumed and outstanding will require the said Union Pacific Company to pay a large sum of money for the year 1893, and an annual sum for each of the years following, the precise amount of which will depend upon the character of the business and the conditions of the country from time to time.

In addition to which your orators aver that the Union Pacific Railway Company and the companies constituting its system are liable for a very large sum of money by way of rentals of roads, which rentals, if not paid, will result in a forfeiture of the constitute part of the Union Pacific system, which leases and dismemberment of the system, and largely impair the value of the Union Pacific property and of its bonds and stock, as well, also, as the value of each of the companies embraced in said system, and the several issues of stock and bonds of each of the same.

Seventh. Your orators allege, on information and belief, that the defendant is indebted for labor and material due and unpaid
5824 on the 1st day of October, 1893, amounting to the sum of $1,-500,000, or thereabouts, on which, if not paid or provided for, the said company is liable to innumerable suits, attachments, and judgments.

That the gross earnings of the Union Pacific Railway system, from the operation thereof and from other property, for the business year ending December 31st, 1892, amounted to	$45,025,176 40
And the revenue from other sources to	1,548,118 99
Making a total of	$46,573,295 39
That its operating and transportation expenses, rentals, interest, sinking fund and other charges paid during the same year amounted to	$44,503,538 35
Leaving a surplus for said year of	$2,069,757 04

Eighth. Your orators further show that it appears from the report of the said Union Pacific Railway Company that from January 1st to July 1st, 1893, there was a falling off in the gross revenues of the company for said six months, as compared with the first six months of the preceding year, of $863,733.38, and a falling off of the net revenues of the company for the same period of time of $839,059.66.

Your orators further show, upon information and belief, that for the months of July and August, 1893, there was a further falling off in the gross revenues of the said system, as compared with the same months of the preceding year, of about the sum of $2,000,000, and a falling off in the net revenues for the said two months, as compared with the same two months of the preceding year, of about $1,400,000.

Your orators further aver, on information and belief, that
5825 there has been a further falling off in the gross revenues of said system for the month of September, 1893, in about the sum

of $1,500,000, as compared with the month of September of the preceding year. Your orators further aver that the foregoing information upon which the said last two allegations are made has been received by them from the officers of the said Union Pacific Railway Company familiar with its affairs, and especially familiar with the result of the operations of said system during the months aforesaid. Your orators further aver that, as appears from a statement made by the financial and accounting officers of the said Union Pacific Railway Company and of the said Union Pacific system, covering the operations of said system for the eight months ending August 31, 1893, there has been a falling off in gross revenues of said system for the said eight months, as compared with the same months of the preceding year, of about $3,154,000, and a falling off in net revenues of the said system for the same eight months, as compared with the same period of the preceding year, of about the sum of $2,588,000; the said statement being in the words and figures following, to-wit:

5826

THE UNION PACIFIC SYSTEM.

(8,166 Miles of Railway, including also the Water Lines of the Oregon Railway and Navigation Company.)

Approximate Result of the Financial Operations of the Entire System for the eight months Ending August 31, 1893, in comparison with the same months in 1892.

	1893.	1892.	Increase.	Decrease.
INCOME.				
Earnings	‡$24,649,706.58	$27,803,713.70		$3,154,007.12
Operating Expenses, excluding Taxes	‡ 17,631,163.53	18,197,371.38		566,207.85
Surplus Earnings, taxes not deducted	‡$7,018,543.05	$9,606,342.32		$2,587,799.27
Income from Investments outside of the System	432,210.62	439,202.72		6,992.10
Interest due March 1, 1892, on Sinking Fund Mortgage 8 per cent. Bonds, repayable by the Trustees		99,920.00		99,920.00
Proceeds Miscellaneous Land Sales	8,769.25	13,895.79		5,126.54
Montana Union Railway Co., Rental, one-half of	32,908.16	32,908.15		
Total Income	$7,492,131.08	$10,191,968.99		$2,699,837.91
EXPENDITURES.				
Taxes	$1,050,553.35	$1,098,443.09		$7,889.74
Interest on Bonds and Trust Notes	7,229,333.33	7,164,160.00	$65,173.33	
Discount and Interest	*48,195.48	*28,048.57		20,146.91
United States Requirements	710,000.00	775,000.00		65,000.00
Sinking Fund Requirements of companies in the System	568,272.50	813,420.84		245,148.34
Dividend on Oregon R'y & Navigation Co. Stock Allout	299,355.00	298,342.00	1,013.00	
Loss in Operation of the Oregon R'y & Nav. Co., Water Lines	† 70,000.00	62,239.97	7,760.03	
Northern Pacific Terminal Co., Interest	78,880.00	78,880.00		
Discount on Bonds sold, Premiums, &c.	3,824.42	1,668.75	2,155.67	
Land Expenses, Union Division	34,442.91	54,774.63		20,330.72
Land Taxes, Union Division	*5,615.13	7,918.15		13,533.28
Profit and Loss	981.34	11,066.78		10,085.43
Total Expenditures	$10,031,833.25	$10,337,865.64		$306,032.39
Balance of Income, Deficit	$2,539,702.17	$145,896.65	$2,393,805.52	

* Credit.
† August, 1893, estimated at $6,000 loss.
‡ August, 1893, estimated.

5827 Your orators further aver on information and belief that the stagnation of business in the territory through and into which the said system extends and the financial depression now prevailing throughout the country, indicate, and your orators charge the fact to be, that there will be a still further falling off in gross and net revenues of said company for the remaining months of the year 1893, as compared with the same months of the preceding year.

Wherefore, your orators allege that for the year 1893 the business of the said company will fail to meet its expenses and charges by the sum of at least $3,000,000; that the said falling off in the earnings of the said system is occasioned in part by the decrease in immigration, in part by the depression in business and the extraordinary stringency of the money markets amounting to a financial panic, and other causes well known to the public.

And your orators aver, upon information and belief, that the said defendant, the Union Pacific Railway Company is not now and will not hereafter during the said year 1893, be able to earn, either upon its own lines of railway or upon the said system, or either or both, its operating expenses and fixed charges, and that the said defendant is insolvent, that is to say, it cannot pay or meet its indebtedness and liabilities as they fall due or accrue, in the usual and ordinary course of business.

Ninth. That the said bonds secured by the various mortgages made by the defendant, the Union Pacific Railway Company, and the said several branch roads and connecting companies are each capable of separate default, and said mortgage and equipment contracts of separate foreclosure on some part of said railway system or its equipment; and your orators aver that a separate foreclosure of any

5828 one of said mortgages or liens would be disastrous to the entire system.

That the bonds issued under the said mortgages are held by different individuals and corporations both in the United States of America and in Europe; that there is only a partial record, to wit, of registered bonds kept by the defendants, so that it would be impossible for the defendants or your orators to name the persons owning said bonds.

Your orators further show that interest and sinking-fund charges have matured during the said month of September on the bonds outstanding of the said Union Pacific Railway Company and of the said several railway corporations composing its said system to the amount of more than $1,000,000, a portion of which is unpaid, and during the month of October, 1893, interest and sinking-fund charges will mature to an amount of about $750,000, and during the month of November interest and sinking-fund charges will mature in the amount of about $850,000, and during the month of December, 1893, interest and sinking-fund charges will mature in the sum of about $1,000,000, and during the month of January, 1894, interest and sinking-fund charges will mature in the sum of more than $1,000,000, and thereafter from month to month the interest and sinking-fund charges will mature at the rate of about $1,000,000 per month.

3501

Your orators further aver, on information and belief, that neither the said Union Pacific Railway Company, nor any of the said railroad corporations composing the said Union Pacific system, will or can have sufficient funds or assets with which to pay the said
5829 interest and sinking-fund charges so maturing from month to month on all or any of said obligations at the several dates when such interest and sinking-fund charges are due and payable; and the said Union Pacific Railway Company and each of the said several railway companies constituting a part of the Union Pacific system will necessarily default in the payment of such interest and sinking-fund charges maturing the said remaining months of the present year, and thereby the holders of the bonds and obligations of the said several companies will have the right to commence a multitude of actions against the said Union Pacific Railway Company and the said several other defendant railway corporations to recover the said several sums of money due on their bonds and obligations, and thereby a multiplicity of suits will be commenced against each of the said defendants, and their properties, both real and personal, will be seized upon to satisfy the said debts and demands; the various mortgages securing the said bonds and obligations will become defaulted and subject to foreclosure proceedings, and the said Union Pacific system will be dismembered, and the said several corporate roads and properties deprived of their just and fair value as parts of the said system, and the properties, assets, and securities of the said several companies will be greatly lessened, depreciated, and dissipated to the manifest and irreparable injury of the public, the Government of the United States, and the company's creditors and shareholders.

Tenth. Your orators further aver that the owned, controlled, and operated lines of railroad and the lands and terminal properties of the defendant the Union Pacific Railway Company lie in many
5830 different States and Territories and are subject to the jurisdiction of the courts in each of the counties in each of said States and Territories in which the property of the said defendant railway company is situated.

That the said railroads and properties as now held and controlled or operated as part of the said system by or for the last-named defendant, as aforesaid, form important trunk lines which constitute one of the most important ingredients of their value, and that their severance would result in a ruinous sacrifice to every interest in the property, including the rights and interests of your orators; and that unless this Court, in view of the impending and inevitable defaults, as aforesaid, will deal with the property as a single trust fund, and take it into judicial custody for the protection of every interest therein, individual creditors will assert their remedies in different courts in said several States and Territories; that a race of diligence will result and judgments and priorities will be attempted; that levies and attachments will be laid upon engines and cars of each of the said several defendants, which will greatly inter-

fere with and ultimately prevent the said defendants from the proper discharge of their duties as public carriers; that the transportation of the United States mails and property will be stopped; that the said Union Pacific Railway Company will be unable to fulfill its charter duties to the Government of the United States and to connecting railroads; that commerce between the several States will be interfered with; that communication between many cities, towns, and places which are wholly dependent upon said railroads will be interrupted; that serious and irreparable injury to their trade and commerce and their general prosperity will result; that
5831 divers of the lessors of the railroads now operated by the said defendants as aforesaid will enforce the re-entry covenants of their leases; that a continued default of the mortgage debts will, by the terms of the various mortgages, produce the immediate maturity of all the bonds secured by said mortgages; that a vast and unnecessary multiplicity of suits will result, and a most important and valuable property will be dismembered by the clashing decrees of many courts at the suits of separate creditors. Your orators aver that said system may be protected and preserved as a valuable single property by adequate judicial intervention and action, and the sums due and to become due to the said defendant's bondholders and creditors secured and ultimately paid in full; but your orators aver that unless such a course is pursued, to-wit, the taking of the property into judicial custody, said property will be dismantled, dissipated and dismembered, and vast sums of money will be lost to the various creditors and stockholders of said defendant companies, and the public interests seriously affected. And your orators aver that the unity of the property and its integrity as a whole, as now held and operated, constitute the most important elements of its value, and that to permit its severance will result in ruinous sacrifice of every interest in said property.

Eleventh. That by said acts of Congress there was granted to the said defendant the Union Pacific Railway Company, its successors and assigns, for the purpose of aiding in the construction of its said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public
5832 stores over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers to the amount of ten alternate sections per mile on each side of said railroad line not reserved, sold, granted or otherwise appropriated and free from pre-emption or other claims or rights at the time the line of said railroad should be definitely fixed.

That the lands so granted lie in the States of Nebraska, Wyoming, Kansas, Colorado and the Territory of Utah.

That one of the reasons which influenced the said Union Pacific Railway Company to construct or acquire many of the branch and connecting roads hereinbefore described was to bring into the market large and fertile tracts of said lands lying at distances more or less remote from its main lines.

That the lands sold by the said defendant have been sold at low prices; the policy of the defendant in fixing such low prices on said lands being to attract purchasers, in order that the country tributary to its lines of railroad might become settled and its business thereby increased.

That the policy pursued by the said defendant in the sale of its lands has resulted in the building of many cities and towns and in establishing innumerable farms, and manufacturing and other industries along its main line and branches, and in the erection of a great commerce between the States and Territories through and into which the several lines composing the Union Pacific system run, and between those States and the other States of the United States and Europe and Asia, from which a large and profitable traffic has grown up over the defendant's railway system.

5833 That the object sought to be accomplished by the said defendant in offering its lands for sale to settlers at the low price hereinbefore stated, namely, the settlement of the country tributary to its railroad, and the consequent creation of a large and profitable traffic over its railway system having been accomplished, the time has arrived when the said defendant can wisely adopt a policy of holding its remaining lands for higher prices; and your orators allege that, if the said defendant's said railway system and the lands so remaining to it can be taken into judicial custody and preserved and managed as a unit, said remaining lands can be sold from time to time for prices equal to their constantly increasing value, and the proceeds that will be received from such sales, together with the earnings of the said defendant's railway system, will be more than sufficient to pay and discharge all the defendant's obligations to its creditors, and preserve for its stockholders said railway system freed from debt. If said lands be not taken into judicial custody by the appointment of Receivers authorized and empowered to preserve the same and said railway as a unit, said lands will be sold under decrees and executions at the suits of lien holders or others at prices far less than their value, and will not realize, together with said railway system, a sum anything like sufficient to pay the bonds now outstanding under the several mortgages made by the defendant as aforesaid.

Your orators allege that said lands are worth a sum so far in excess of any sum that can be paid by any individuals who would be likely to purchase the same at a public judicial sale, that to allow said lands

5834 to be sold in such a manner would be to sacrifice the same, and would entail great and irreparable loss upon the stockholders, bondholders and creditors of the defendant.

That part of the assets and property of the said Union Pacific Railway Company is located in the State of Nebraska, in the district embraced within the jurisdiction of the Circuit Court of the United States for the Eighth Circuit and District of Nebraska.

Twelfth. Your orators state that the aforementioned grant of lands and subsidy bonds of the United States to the Union Pacific Railroad Company, and branches constituting the system of Pacific railroads, was declared by Section Six of the said Act of Congress of July 1st,

1862, to be made "upon condition that the said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches by said telegraph line, and transport mails, troops and munitions of war, and public stores, upon said company's railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service); and all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid."

By the Act of Congress approved March 3, 1873, relating to the said Union Pacific Railroad Company, it was, in order effectually to secure the rights of the United States in respect to the said road and its continued and uninterrupted operation and use, among other things, enacted as follows:

"The laws of the United States providing for proceedings
5835 in bankruptcy shall not be held to apply to the said corporation."

And your orators show that the Supreme Court of the United States, in considering the relations of the Union Pacific Company to the Government of the United States, has adjudged that the said company and all of its branches mentioned and described in the said acts of Congress constitute public and governmental agencies of the United States, for the purpose of securing to the United States, at all times, the operation and use of the said road for the purposes specified in the acts of Congress in that behalf, which purposes would be defeated if the rolling stock and property of the said railroads were seized and sold under attachments, levies and executions, and the interest of the United States, as well as all of the other creditors of the company, would be thereby irreparably injured and destroyed.

Thirteenth. And your orators further allege that the matters in controversy herein exceed the sum of $5,000, exclusive of interest and costs.

And your orators allege that this is a suit arising under the Constitution and laws of the United States, and especially under and by virtue of the several acts of Congress hereinbefore referred to.

Wherefore, and for as much as your orators are remediless in the premises at and by the strict rules of the common law, and can have relief only in a court of equity, where matters of this nature are properly cognizable and reviewable, they file this bill of complaint in behalf of themselves and all others in like relations to the said property, and pray, the premises considered:

1. That your honors may grant unto your orators a writ of
5836 subpœna directed to the defendants, the Union Pacific Railway Company; the Atchison, Colorado and Pacific Railway Company; the Atchison, Jewell County and Western Railway Company; the Boulder Valley and Central City Wagon Road Company; the Bozeman Coal Company; the Callaway Improvement Company; the Carbon Cut-Off Railway Company; the Central Branch Union

Pacific Railroad Company; the Denver, Leadville and Gunnison Railway Company; the Green River Water Works Company; the Junction City and Fort Kearney Railway Company; the Kansas Central Railroad Company; the Kansas City and Omaha Railroad Company; the Kearney and Black Hills Railway Company; the Laramie, North Park and Pacific Railroad and Telegraph Company; the Lawrence and Emporia Railway Company; the Loveland Pass Mining and Railroad Tunnel Company; the Montana Railway Company; the Morrison Stone, Lime and Town Company; the Omaha and Republican Valley Railway Company; the Oregon Railway and Navigation Company; the Oregon Short Line and Utah Northern Railway Company; the St. Joseph and Grand Island Railroad Company; the Salina and Southwestern Railway Company; the Solomon Railroad Company; the Union Land Company; the Union Pacific, Denver and Gulf Railway Company; the Union Pacific, Lincoln and Colorado Railway Company; and the Union Pacific Coal Company, thereby commanding each of them at a certain time and under a certain penalty therein to be named, personally to be and appear before this honorable court, then and there to swear to all and singular the matters aforesaid, but without oath, all answers under oath being hereby expressly waived according to the practice under the rules of this court, and to stand and abide by and perform such order, direction and decree as shall be made herein and as to your honors
5837 shall seem equitable and just.

2. That the court will full administer the trust fund in which your orators are interested, constituting the entire railroad system, lands and assets of the said defendant corporation, the Union Pacific Railway Company, and will for such purpose marshal all its assets and ascertain the several respective liens and priorities existing upon each and every part of all the said system of railway and property and the amount due upon each and every part of such mortgages or other liens, and enforce and decree the rights, liens and equities of each and all the stockholders and bondholders and creditors of the said defendants, and of each of them, as the same may be finally ascertained and decreed by the court upon the respective intervention or application of each and every of such stockholder, creditor or lienor, in and to not only said lines of railroad, appurtenances, equipments, land and property, but also to and upon each and every portion of the assets and property of each of the said corporations.

3. That, for the purpose of enforcing the liens and equities of the holders of the loans and of the floating debt of the said defendant, the Union Pacific Railway Company, and of the respective stockholders, bondholders, lien holders and general creditors of each of the said defendants, and of each of the companies embraced in or operated as a part of the said system, as well as to preserve the unity of said system as it has been for years maintained and operated, and preventing the disruption thereof by separate executions, attachments and sequestrations, the occurrence of which will be unavoidable in view of the inevitable defaults in interest and other payments which

5838 will soon occur, your orators pray that this court will forthwith appoint one or more receivers of the entire system of railroads held, controlled, leased or operated by, or in the interest, or for the benefit of, the said defendant, the Union Pacific Railway Company, and of all the equipments, material, machinery, supplies, moneys, accounts, choses in action, shares of stock, bonds, property, and assets of every description and wheresoever situated, and of all said lands and land grants, leasehold, contractual rights and property belonging to the said defendant, the Union Pacific Railway Company, as well also as all those belonging to each of the defendants herein, and those of each of the said several companies controlled, leased or operated by, for or in the interest of said Union Pacific Railway Company, as a part of, or in connection, with said system, with authority to manage and operate the same; and that each of the defendants and the officers, managers, superintendents, agents and employees of each of the defendants be required forthwith to deliver up the possession of all and singular each and every part of the said property, over which the receivers shall be appointed, wherever situate, also all books of accounts, office vouchers and papers in any way relating to the business or operation of said system of railways, and for an injunction restraining perpetually and during the pendency of this suit each of the defendants and every of the officers, directors, managers, superintendents, agents and employees of each of the defendants, and all persons whomsoever, from interfering in any way whatever with the possession and control of the receivers over any part of said property.

4. And that your orators may have such other and further relief as to the Court may seem proper, and as may be necessary to
5839 fully enforce the rights and equities of your orators, and of all other creditors and stock holders of the defendant corporations.

N. S. HARWOOD,
JOHN H. AMES,
Solicitors for the Complainants.

DANA S. LANDER,
Of Counsel for the Complainants.

UNITED STATES OF AMERICA,
District of Massachusetts. } *ss.*

Oliver Ames, 2d, and Samuel Carr, Executors, and Edwin F. Atkins, being first duly sworn, depose and say that they are the complainants above named; that the foregoing bill of complaint has been read by them, and that they know the contents thereof and that the same are true of their own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters they believe them to be true.

(Sgd.) OLIVER AMES, 2nd.
SAMUEL CARR. } Executors.
EDWIN F. ATKINS.

Sworn to before me this 5th day of October, 1893.

(Seal)

FRANK D. BUTRICK,
Notary Public.

EXHIBIT A.

THE UNION PACIFIC RAILWAY COMPANY.

Funded debt, December 31, 1892.

Class.	Trustees.	Interest Payable.	December 31, 1892.		
			Issued and outstanding.	Owned by the Company and held by Trustees.	Afloat.
UNION PACIFIC RAILROAD CO.					
First Mortgage Bonds	Fredk. L. Ames, F. Gordon Dexter	Jan. and July	$27,229,000.00		$27,229,000.00
Land Grant Bonds	Union Trust Co., of New York		(b) 8,000.00		(b) 8,000.00
Sinking Fund Coupon Bonds	Union Trust Co., of New York	March and Sep	4,721,000.00		4,721,000.00
Sinking Fund Registered Bonds	Union Trust Co., of New York	March and Sep	455,000.00		455,000.00
Omaha Bridge Bonds	J. Pierpont Morgan, Fredk. L. Ames, and Edwin F. Atkins.	April and Oct	732,000.00	(c) $4,000.00	728,000.00
Collateral Trust Six Per Cent. Bonds	Union Trust Co., of New York	Jan. and July	3,775,000.00		3,775,000.00
KANSAS PACIFIC RAILWAY CO.					
Eastern Division Bonds	H. M. Alexander	Feb. and Aug	2,240,000.00		(i) 2,240,000.00
Middle Division Bonds	Adolphus Meier	June and Dec	4,063,000.00		(i) 4,063,000.00
Denver Extension Bonds	John A. Stewart, Wm. Endicott and August Rutten	May and Nov	5,887,000.00		(i) 5,887,000.00
Leavenworth Branch Bonds	H. M. Alexander	May and Nov	600,000.00	(d) 585,000.00	15,000.00
Consolidated Mortgage Bonds	Russell Sage, (a) George J. Gould	May and Nov	11,720,000.00		(j) 11,720,000.00
Income Bonds	American Loan & Trst Co. Boston	March and Sep	263,700.00	(e) 242,450.00	21,250.00
Income Bonds (Subordinated)	American Loan & Trst Co. Boston	March and Sep	4,011,650.00	(f) 3,997,100.00	14,550.00
Cheyenne Branch Bonds	Russell Sage, (a) George J. Gould	May and Nov	975,000.00	(g) 971,000.00	4,000.00
Denver Extension Coupon Certificates		May and Nov	385.00		385.00
UNION PACIFIC RAILWAY CO.					
Trust Five Per Cent. Bonds	New England Trust Co., Boston	June and Dec	4,790,000.00		4,790,000.00
Trust Five Per Cent. Bonds registered	New England Trust Co., Boston	June and Dec	18,000.00		18,000.00
Omaha Bridge Renewal Bonds	Central Trust Co., New York	April and Oct	889,000.00	(h) 300,000.00	589,000.00
Equipment Trust B'ds, Series A	American Loan & Trst. Co., Boston	April and Oct	358,000.00		358,000.00
Equipment Trust B'ds, Series B	American Loan & Trst. Co., Boston	April and Oct	1,263,000.00		1,263,000.00
Equipment Trust B'ds, Series C	American Loan & Trust Co., Boston	April and Oct	671,000.00	(c) 671,000.00	

Kansas Division and Collateral Mortgage Bonds	Mercantile Trust Co., New York	May and Nov.	5,000,000.00	(c) 5,000,000.00	
Collateral Trust Four and a Half Per Cent. Bonds	New England Trust Co., Boston	May and Nov.	2,037,000.00	(c) 237,000.00	1,800,000.00
Collateral Trust Six Per Cent. Notes	Drexel, Morgan & Co., New York	Feb. and Aug.	15,976,000.00	(g) 183,000.00	15,793,000.00
Total			$97,682,735.00	$12,190,550.00	$85,492,185.00

(a) Appointed since the close of the year to fill the vacancy caused by the death of Jay Gould.
(b) These bonds were due April 1, 1889, but have not yet been presented for redemption.
(c) Owned by the Company, and held by the Trustees under the Trust Indenture of September 4, 1891, as part security for the Collateral Trust six per cent. Notes.
(d) $582,000 of these bonds are held by the Trustees under the Kansas Pacific Consolidated Mortgage, the balance, or $3,000, being owned by the Company and in the hands of the Treasurer.
(e) $241,200 of these bonds are held by the Trustees under the Kansas Pacific Consolidated Mortgage, the balance, or $1,250, are owned by the Company and held by the Trustees under the Trust Indenture of September 4, 1891, as part security for the collateral Trust six per cent. Notes.
(f) $3,992,650 of these bonds are held by the Trustees under the Kansas Pacific Consolidated Mortgage, the balance, or $4,450, being owned by the Company and in the hands of the Treasurer.
(g) Held by the Trustees under the Kansas Pacific Consolidated Mortgage.
(h) These bonds are owned by the Company, $145,000 being held by the Trustees under the Trust Indenture of September 4, 1891, and $155,000 being in the hands of the Treasurer.
(i) Of these amounts, $304,000 in Eastern Division Bonds, $37,000 in Middle Division Bonds, and $1,651,000 in Denver Extension Bonds, on which the Union Pacific Railway Company pays interest, are held as investments in the Kansas Pacific Denver Extension Sinking Fund.
(j) The American Loan and Trust Company, Trustee under the Kansas Pacific Further Security Sinking Fund, holds $116,000 of these bonds.

5842 *Exhibit B, the same being Schedule "A," annexed to and part of the trust indenture of September 4, 1891.*

BONDS.

	Par Value.
Union Pacific, Denver & Gulf Ry. Co. First Mortgage 5s	$8, 823, 000. 00
Oregon Short Line & Utah Nor. Ry. Co. Consolidated 5s	3, 971, 000. 00
Oregon Short Line & Utah Nor. Ry. Co. Col. Trust 5s	4, 573, 500. 00
Utah & Northern Ry. Co. First Mortgage 7s	353, 000. 00
Idaho Central Ry. Co. First Mortgage 6s	91, 000. 00
Utah Southern R. R. Co. First Mort., due July 1, '91, 7s	424, 000. 00
Utah Southern R. R. Extension First Mortgage 7s	899, 000. 00
Union Pacific R. R. Co. Omaha Bridge 8s	5, 000. 00
Union Pacific Ry. Co. Omaha Bridge Renewal 5s	145, 000. 00
Union Pacific Ry. Co. Kansas Division & Col. Mort. 5s	5, 000, 000. 00
Union Pacific Ry. Co. Collateral Trust 4½s	237, 000. 00
Colorado Central R. R. Co. First Mortgage 7s	1, 370, 000. 00
Colorado Central R. R. Co. First Mortgage 8s	22, 000. 00
Kansas City & Omaha R. R. Co. First Mortgage 5s	1, 595, 500. 00
Kansas Central R. R. Co. First Mortgage 6s	1, 347, 000. 00
Loveland Pass Mining & R. R. Tunnel Co. First Mort. 7s	400, 000. 00
Manhattan, Alma & Burlingame Ry. Co. First Mort. 6s	339, 000. 00
Echo & Park City Railway Co. First Mortgage 6s	480, 000. 00
5843 Omaha & Republican Valley R. R. Co. First Mort. 7s	41, 000. 00
Omaha & Republican Valley Ry. Co. Con. Mort. 5s	520, 000. 00
Omaha & Republican Valley Ry. Co. Extension 5s	1, 246, 000. 00
Union Pacific Coal Co. First Mortgage 5s	4, 950, 000. 00
Green River Water Works Co. First Mortgage 6s	223, 000. 00
Rattlesnake Creek Water Co. First Mortgage 6s	132, 000. 00
Union Depot Co., Spokane Falls, First Mortgage 5s	300, 000. 00
Ogden Union Ry. & Depot Co. First Mortgage 5s	163, 000. 00
Western Pacific R. R. Co. (Cen. Pac.) First Mort. 6s	12, 000. 00
Kansas Pacific, Denver Extension, First Mort. 6s	1, 000. 00
Kansas Pacific Railway Co. Income 7s	1, 250. 00
St. Louis, Council Bluffs & Omaha R. R. Co. First Mort. 6s	19, 500. 00
Kearney & Black Hills Railway Co. First Mortgage 5s	105, 000. 00
City of Wichita, Kansas, 6s	42, 566. 00
Junction City, Davis County, Kansas, 6s	5, 000. 00
Oregon Ry. & Navigation Co. First Mortgage Consol. 5s	712, 000. 00
Oregon Ry. & Navigation Co. Collateral Trust 5s	1, 632, 000. 00
Atchison Union Depot Co. Second Mortgage 5s	4, 500. 00
Denver, Leadville & Gunnison Ry. Co. First Mortgage 4½s	23, 000. 00
Total bonds	$40, 207, 816. 00

STOCKS.

Oregon Short Line & Utah Northern Ry. Co	$14, 990, 703. 33
Union Pacific, Denver & Gulf Ry. Co	13, 251, 882. 00
Union Pacific Coal Co	5, 000, 000. 00
5844 Pacific Express Co	2, 400, 000. 00
Central Branch Union Pacific R. R. Co	874, 200. 00
Oregon Railway & Navigation Co	1, 035, 000. 00
Carbon Cut-Off Railway Co	220, 000. 00
Denver, Leadville and Gunnison Ry. Co	3, 000, 000. 00
Echo & Park City Railway Co	480, 000. 00
Junction City & Fort Kearney Ry. Co	44, 000. 00
Kansas Central Railroad Co	1, 313, 400. 00
Kansas City & Omaha Railroad Co	1, 725, 375. 00
Laramie, North Park & Pacific R. R. & Telegraph Co	66, 500. 00
Lawrence & Emporia Railway Co	465, 000. 00
Leavenworth, Topeka & Southwestern Ry. Co	550, 900. 00
Manhattan, Alma & Burlingame Ry. Co	418, 650. 00
Montana Railway Co., 70 per cent. paid on $600,000	420, 000. 00
Montana Union Railway Co	425, 000. 00

	Par value.
Omaha & Elkhorn Valley Railway Co	$40,300.00
Omaha & Republican Valley Ry. Co	2,327,523.77
St. Joseph & Grand Island R. R. Co	2,301,500.00
Salina & Southwestern Railway Co	231,700.00
Union Pacific, Lincoln & Colorado Ry. Co	1,997,800.00
Bozeman Coal Co	96,000.00
Green River Water Works Co	225,000.00
Morrison Stone, Lime & Town Co	100,000.00
Occidental & Oriental Steamship Co., 3 per cent. on $5,000,000	150,000.00
Omaha Union Depot Co., 10 per cent. on $75,000	7,500.00
5845 Rattlesnake Creek Water Co	66,300.00
St. Joseph Terminal Railroad Co	25,000.00
St. Louis and Mississippi Valley Transportation Co	116,000.00
Salt Lake Foundry & Manufacturing Co	67.00
Union Depot Co., Kansas City	21,000.00
Union Elevator Co., Council Bluffs	46,700.00
Union Elevator Co., Omaha	81,000.00
Union Pacific and Western Colorado Railway Co	400,500.00
Wood River Improvement Co., 80 per cent. on $100,000	80,000.00
Atchison, Colorado & Pacific R. R. Co	920,300.00
Atchison, Jewell County & Western R. R. Co	105,000.00
Kearney & Black Hills Railway Co	337,963.91
Union Pacific Railway Co	177,450.00
Loveland Pass Mining & Railroad Tunnel Co	4,800.00
Colorado Western Railroad Co	9,100.00
Gray's Peak, Snake River & Leadville R. R. Co	6,000.00
South Park & Leadville Short Line R. R. Co	1,000,000.00
Western National Fair Association	7,950.00
Total Stocks	$57,563,068.01

MISCELLANEOUS.

Debt Certificates of the Portland & Puget Sound R. R. Co	$969,245.98
Note of the Echo & Park City Railway Co	200,000.00
Note of the Union Depot and R. R. Co., Denver	33,683.84
Notes of the Hutchison & Southern R. R. Co	768,500.00
Note of the Wood River Improvement Co	350,000.00
Note of the Union Depot Co., Spokane Falls	21,051.64
Total Miscellaneous	$2,342,481.46
Grand Total	$100,113,365.47

5846 Mr. LOVETT. Defendants offer in evidence, as Defendants' Exhibit 11, copy of the answer of the defendant Union Pacific Railway Company in the same case as Defendants' Exhibit 10.

It is stipulated that the copy offered may be used in place and stead of the original, subject to correction.

Defendants' Exhibit 11 is as follows:

DEFENDANTS' EXHIBIT 11.

ANSWER OF THE UNION PACIFIC RAILWAY COMPANY, DEFENDANT.

(Title of case and caption omitted.)

And now the defendant the Union Pacific Railway Company, above-named comes into court by its solicitor, and for its answer to the bill of complaint of the above-named complainants respectfully shows to this Honorable Court:

First. The defendant admits that the plaintiffs are stockholders and creditors of the defendant corporation, as in said bill of complaint alleged. It admits its incorporation and the construction or acquisition of its railroad system and property and their operation by the defendant, as in said bill of complaint alleged: it admits that its earnings have been falling off as in said bill of complaint alleged: that at the present time, and for some time past, the defendant's fixed charges and operating expenses have exceeded its gross earnings and receipts, as in said bill of complaint alleged; that there is no prospect in the near future of an increase in its gross earnings to an amount sufficient to enable the defendant to pay its operating expenses and fixed charges: that the defendant is so far insolvent; that it will not be able to pay the interest, sinking fund charges, rentals and other debts falling due the remaining months of 1893 and January, 1894, as set out in the said bill of complaint; and
5847 that it will be compelled to make default in said payments on said days.

Second. The defendant further admits that the value of its railway system, land grants, franchises and property depends upon the same being preserved and operated as a unit, as in said bill of complaint alleged: that if the same be so preserved the debts due and to become due by the defendant to its several creditors can be secured and ultimately paid in full, as in said bill of complaint alleged; that in order so to preserve its said railway system, land grant, franchises and property it is necessary that the same should be taken into judicial custody, and that one or more receivers of the defendant, its property and franchises, should be appointed, and the defendant hereby consents to the appointment of one or more receivers, as prayed for in said bill of complaint.

Third. The defendant admits each and every allegation in said bill of complaint contained not hereinbefore specifically admitted.

Dated October 9th, 1893.

[Seal] THE UNION PACIFIC RAILWAY CO.
By JAMES G. HARRIS, *Treasurer.*

Attest:
ALEX. MILLAR,
Secretary.

W. R. KELLY.
Solicitor for Defendant.

E. P. SMITH,
Of Counsel for Defendant.

Filed October 9th, 1893.

5848 Mr. LOVETT. Defendants offer in evidence, as Defendants' Exhibit 12, copy of order appointing Receivers in same case as Defendants' Exhibit 10.

It is stipulated that the copy offered may be used in place and stead of the original, subject to correction.

Defendants' Exhibit 12 is as follows:

DEFENDANTS' EXHIBIT 12.

ORDER APPOINTING RECEIVERS.

(Title and Caption omitted.)

Upon reading and considering the verified bill of complaint in this cause and the answer of the defendant the Union Pacific Railway Company this day filed, and on motion of counsel for the complainants, the defendant, the Union Pacific Railway Company, appearing by counsel and assenting thereto, and each of the other defendants appearing by counsel and assenting hereto,

And due deliberation being therein had, it is

Adjudged, ordered and decreed by the court that S. H. H. Clark, of St. Louis, and Oliver W. Mink, of Boston, and E. Ellery Anderson, of New York, be, and they are hereby, appointed Receivers of this Court of all and singular the said defendant, the Union Pacific Railway Company, and of all the railroads and assets described in the bill of complaint herein, the same being the system of railways now in possession of and owned, operated, leased or controlled by, for, or in the interest of, the said corporation, the Union Pacific Railway Company, situated in the States of Nebraska, Iowa, Kansas, Colorado, Missouri, Wyoming, Montana, Idaho, Washington, Nevada, Oregon, New York, Massachusetts, and the Territories of Utah and New Mexico, and all the property of said Union Pacific Railway Company, and of each of said companies, real, personal, and mixed
5849 of whatever kind and description, and wherever situated, whether described in the bill of complaint or not, including all equipments, locomotives, cars and other rolling stock, boats, steamships, ships, docks, piers, floats, machinery, tools, material, shops, coal yards and fixtures, coal on hand and supplies now owned, held or in possession and use for such corporations, and wherever situated, and including all track, terminal facilities, real estate, warehouses, offices, stations and all other buildings of every kind owned, held or possessed by said companies, together with all telegraph lines and the appurtenances thereto; and also all the moneys, books of account, contracts of every kind, debts, things in action, bonds, stocks, securities, deeds, leases, leasehold interests, beneficial muniments of title, bills receivable, rents, profits and income of the premises accruing and to accrue, as well as all franchises, rights, easements and privileges of said Union Pacific Railway Company, and of each of said companies.

That the said Receivers be, and they are hereby, fully authorized and directed to take immediate possession of all and singular the railroads and property above described or referred to, wherever situated or found, and continue the operation of said railroad and water system and every part thereof, and to run, manage and operate the said railroads and such other railroads as said Union Pacific Railway Company holds, controls or operates under lease, contract or other-

wise, and has heretofore run and operated, or which have been or are being operated by, for or in the interest of the Union Pacific Railway Company as part of its system, and to exercise the authority and franchises of the said company, and conduct systematically
5850 the business and occupation of a common carrier of passengers and freight, and discharge all of the public and Governmental duties obligatory upon said railway corporation or upon any of the other corporations whose lines of road are now in the possession of and operated by or for or in the interest of the said Union Pacific Railway Company; and to preserve the said property in proper condition and repair, so that it may with safety and most advantageously be used and to protect the title and possession of the same, and to employ such persons and make such payments and disbursements as may be needful or proper in so doing.

Each and every of the officers, directors, agents or employees of the said Union Pacific Railway Company, and of each of the defendants, and all other persons and corporations soever, as well as each of the defendants, are hereby required and commanded forthwith, to turn over and deliver to such Receivers or their duly constituted representatives any and all railroads, property, books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or their hands, or under his or their control; and each and every of such directors, officers, agents, persons or corporations are hereby commanded and required to obey and conform to such orders as may be given them, from time to time, by the said Receivers, or their duly constituted representatives in conducting the operations of said property and in discharging their duties as such Receivers; and each and every of such officers, directors and employees of the said Union Pacific Railway Company, and of each of the defendants, and all other persons and corporations soever are hereby enjoined from interfering in any way whatever with
5851 the possession or management of any part of the property over which the Receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties or operating the same under the Court's order.

Said Receivers are hereby fully authorized to operate the said system of railroads so owned, leased, operated or controlled by or for or in the interest of the said Union Pacific Railway Company, and manage all other property of such corporation at their discretion and in such manner as will in their judgment produce the most satisfactory results consistent with the discharge of the public duties imposed thereon, and to collect and receive all the income therefrom and all the debts due said companies of all kinds; and for such purpose are hereby vested with full power at their discretion to employ and discharge and fix the compensation of all such officers, attorneys, managers, superintendents, agents and employees, to aid in the proper discharge of their duties; and they and each of them shall have power, with the sanction of the Court, to redeem any and all of the securities of the company now pledged as security on loans of money, and they shall have power with the sanction of the Court first had

to borrow money if needful in their judgment in order to comply with this direction, and also so far as may be needful to pay all operating expenses and for current necessities for labor and supplies, but for no other purpose without the further order of this Court.

Said Receivers are fully authorized and empowered to institute and prosecute all such suits as may be necessary in their judgment for the proper protection of the property and trusts hereby vested in them; and to likewise defend such actions instituted against
5852 them as such Receivers, and also to appear in and conduct the prosecution or defense of any suit now pending in any court against the Union Pacific Railway Company, the defendants, or any of them, or any of the companies embraced in the Union Pacific System or operated by, for, or in the interest of said system, the prosecution or defense of which will, in the judgment of said Receivers, be necessary for the proper protection of the property placed in their charge for the interest and rights of creditors connected therewith.

Said Receivers are hereby directed to deposit the moneys coming into their hands in some banks in New York City, Boston and Omaha, and such other cities or places as may be necessary or convenient, and report to the Court what banks they have so selected.

It is hereby further ordered, adjudged and decreed that out of the moneys that shall come into the hands of said Receivers from the operation of said railway properties or otherwise they shall:

1st. Pay all current expenses incident to the creation or administration of this trust and to the operation of said railway or railroads and properties.

2d. Pay all sums due or to become due connecting or intersecting lines of railroads arising from the interchange of business, and for track service of other railroads used by said Union Pacific Railway Company or System, in the operation of its lines, traffic and car mileage, balances and all amounts, now due from said Union Pacific Railway Company or roads or properties constituting part of its system for taxes and assessments upon the property or any part thereof.

3d. Pay the amounts due to all operatives, employees,
5853 attorneys and agents of said company for any service rendered said company or companies within six months prior to the allowance of this order.

4th. Pay all amounts due for supplies and material contracted for or purchased or delivered or used in operating said railway or railroads, or by said company or companies for supplies furnished to laborers and credited against their labor within six months prior to the allowance of this order.

5th. And all amounts due from said railway company or companies for or on account of the rental or compensation for railway lines, property or rolling stock.

6th. The money belonging to the defendants and each company constituting part of the said system, except as heretofore directed,

shall be held by said Receivers until they are authorized to dispose of the same under the order or decree of this Court.

7th. And said Receivers are further authorized in case it is proper in their judgment, with the sanction of the Court, to use any balance of funds arising from the operating of said railroads, for the purpose of protecting such of the real and personal property, as aforesaid, under lease, sale, pledge, mortgage or contract.

It is further ordered that the said Receivers shall retain possession and continue to discharge the duties and trusts aforesaid until the further order of this Court in the premises, and that they shall, from time to time, make report to this Court of their doings in the premises, and may, from time to time, apply to this Court for such other and further order and direction as they may deem nec-
5854 essary and requisite to the due administration of said trust; and said Receivers are vested, in addition to the powers aforesaid, with all the general powers of Receivers in cases of this kind, subject to the supervision of this Court.

It is further ordered that an injunction be issued against the defendants and all other persons claiming to act by, through or under them, and all other persons, to restrain them from interfering with the Receivers further taking possession of and managing said property.

Said Receivers are hereby further required, within twenty days from this date, to file with the Clerk of this Court a proper bond, with sureties to be approved by the Clerk of this Court or a Judge thereof each in the penal sum of fifty thousand dollars, conditioned for the faithful discharge of their duties, and to account for all funds coming into their hands, according to the order of this Court.

13 Oct., 1893.

ELMER S. DUNDY,
Judge.

ELMER D. FRANK,
Clerk.

By E. S. DUNDY, Jr.,
Deputy.

5855 Mr. LOVETT. It is stipulated that ancillary bills in the same litigation were filed, and orders, substantially to the same effect, appointing same receivers in such ancillary proceedings were made, as follows:

Circuit Court of the United States for Southern District of New York	October	13
Circuit Court of the United States for District of Kansas	"	13
Circuit Court of the United States for District of Colorado	"	13
Circuit Court of the United States for District of Massachusetts	"	15
Circuit Court of the United States for Western District of Missouri	"	16
Circuit Court of the United States for Southern District of Iowa	"	16
Circuit Court of the United States for District of Wyoming	"	16
Circuit Court of the United States for District of Washington	"	16
Circuit Court of the United States for District of Montana	"	17
Circuit Court of the United States for District of Oregon	"	17
Circuit Court of the United States for District of Idaho	"	18

5856 Mr. LOVETT. It is stipulated that afterward, and on January 21, 1895, F. Gordon Dexter and Oliver Ames, Second, as Trustees of the first mortgage of The Union Pacific Railroad Company, filed in the Circuit Court of the United States for the District of Nebraska, a bill (in the form customary in such cases in the Circuit Court of the United States) to foreclose the said mortgage, and that afterward, and on the 29th day of July, 1897, a decree of foreclosure was rendered of which the following (subject to correction) being Defendants' Exhibit 13, is a copy, viz:

DEFENDANTS' EXHIBIT 13.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EIGHTH JUDICIAL CIRCUIT AND DISTRICT OF NEBRASKA.

At a Circuit Court of the United States held in and for the District of Nebraska in the City of Omaha on the 29th day of July, 1897.

Present—Hon. Walter H. Sanborn, Circuit Judge.

(Title of cause omitted.)

FINAL DECREE.

This cause came on to be heard on the bill of complaint of F. Gordon Dexter and Oliver Ames, Second, Trustees, complainants, and upon the answers of The Union Pacific Railway Company, The United States of America, The Union Trust Company of New York, Trustee, J. Pierpont Morgan and Edwin F. Atkins, Trustees, the Central Trust Company of New York, Trustee, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers, and upon the replications to said answers
5857 respectively, and upon the supplemental bill of complaint and the answers thereto, and upon the proofs in said cause and the report therein of William D. Cornish, Special Master, to whom said cause was referred by order dated March 25th, 1897, which said report was filed in said cause on the 29 day of July, 1897, and upon the exceptions to said report filed by the said complainants herein and by the defendants the United States of America, and upon all the papers and proceedings in said cause; and it appeared to the Court that orders have been entered that the bill of the said complainants F. Gordon Dexter and Oliver Ames, Second, Trustees be taken as confessed against the defendants The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Omaha & Republican Valley Railway Company, The Kearney & Black Hills Railway Company, Frank H. Peavey, E. C. Michener and Charles F. Peavey, copartners under the firm name and style of F. H. Peavey & Company, The Union Pacific, Denver & Gulf Railway Company, The Salina &

Southwestern Railway Company, The Missouri Pacific Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, and the Chicago & Northwestern Railway Company, which said orders taking said bill pro confesso are hereby confirmed; and it further appeared that orders have been entered in said cause dismissing the bill of complaint and supplemental bill therein as against the defendants the Central Pacific Railroad Company, the Southern Pacific Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway
5858 Company and the Chicago, Kansas & Nebraska Railway Company.

And the complainants in said cause, and the defendants therein, namely: The Union Pacific Railway Company, the Union Trust Company of New York, Trustees; J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers, appearing by their respective solicitors and counsel, and The United States of America appearing by the Attorney-General and by Mr. George Hoadly, Special Assistant to the Attorney-General, and Mr. John C. Cowin, special counsel for the United States, and the same having been argued by counsel, and the Court being fully advised in the premises, and due deliberation being had, it is

ORDERED, ADJUDGED AND DECREED:

1. *Exceptions to Master's report overruled. Report confirmed.* That the several exceptions filed by the complainants and by the defendant the United States of America to the report of William D. Cornish, Special Master, to whom this cause was referred by order therein dated March 25th, 1897, which said report was filed in said cause upon 29th day of July, 1897, be and the same are hereby overruled and said report is hereby, in all respects, approved and confirmed, except as herein otherwise expressly determined.

2. *Incorporation of the Union Pacific Railroad Company. Powers and Route.* That The Union Pacific Railroad Company was duly incorporated and organized under and by virtue of an Act of Congress of the United States, entitled "An Act to aid in the construction of a Railroad and Telegraph Line from the Missouri
5859 River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1st, 1862; also, an Act of Congress amendatory thereof, approved July 2d, 1864, and other Acts of the Congress of the United States amendatory thereof and supplemental thereto.

And said The Union Pacific Railroad Company was, by the Congressional legislation aforesaid, authorized to lay out, locate, construct, furnish, maintain and enjoy the continuous railroad and telegraph described and embraced in the First Mortgage of said Railroad Company hereafter mentioned, and which said railroad extends from

Council Bluffs, on the Iowa bank of the Missouri River, across said river and through the States of Nebraska, Colorado, and Wyoming, into the State of Utah, to a connection with the railroad of the Central Pacific Railroad Company, at a point about five miles west of the city of Ogden, in the State of Utah, a distance of 1,042.41 miles, more or less, of main line, including the bridge over the Missouri River between Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska; all of which line of railroad and telegraph and bridge, with the branches and appurtenances thereof, were located, constructed, equipped and furnished by The Union Pacific Railroad Company, as, in the manner and upon the conditions, within the times and upon the approvals and consents contemplated, defined and described in said legislation.

3. *Formation by Consolidation of The Union Pacific Railway Company.* That the defendant, The Union Pacific Railway Company is a corporation created by and existing under and by virtue of the said Acts of the Congress of the United States of July 1st,
5860 1862, and of July 2d, 1864, and the other Acts of the Congress of the United States amendatory thereof and supplemental thereto. That the said The Union Pacific Railway Company was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several Acts of the Congress of the United States, by the consolidation of The Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, and said The Union Pacific Railway Company, so created, thereupon became the successor to each and all of the said constituent Companies, and thereby became vested with all the rights, titles, interest, lands, and land grants, properties and franchises of each and all of the said constituent Companies; and said The Union Pacific Railway Company is the owner of the said railroad, property and franchises embraced in the mortgage of The Union Pacific Railroad Company dated November 1st, 1865, under which the complainants F. Gordon Dexter and Oliver Ames, 2nd, are Trustees, and which is hereinafter more fully referred to; and said The Union Pacific Railway Company, in addition thereto, is the owner of the further lines of railway and property described in the original bill of complaint herein extending from Kansas City, in the State of Missouri, westerly through the State of Kansas and into the State of Colorado to Denver, and from Denver in the State of Colorado, in a northerly direction, to Cheyenne, in the State of Wyoming.

4. *Issue of First Mortgage Bonds. Description and Amount.* That the said The Union Pacific Railroad Company, pursuant to and in accordance with the powers conferred upon it by law, and pursuant to due corporate action, and for the purpose of providing
5861 means to construct and complete its said railroad, did duly make, execute and issue under its corporate seal, and did deliver to various persons, firms and corporations, for value and for the con-

siderations and purposes and in the manner provided by its First Mortgage hereinafter mentioned, its First Mortgage bonds to the number of 27,229 in the aggregate amount of $27,229,000, all of which bonds were, as issued and delivered, duly certified by the trustees named in said mortgage as therein provided, and all of which bonds are now outstanding, and in each of which bonds the said The Union Pacific Railroad Company promised to pay the sum of one thousand dollars to the holder thereof at its office in the City of New York, thirty years after the date thereof, and also interest thereon at the rate of six per centum per annum, payable semi-annually from the date thereof in lawful money of the United States until the principal sum should be paid, on presentation of the interest coupons annexed thereto, at the office of the said Company in the City of New York; and said bonds were issued in the installments, and bearing the dates, and maturing at the dates, respectively, as follows:

Said bonds, to the amount of $6,475,000 were issued, bearing date the first day of January, 1866, and maturing, by the terms thereof, on the first day of January, 1896.

Said bonds, to the amount of $1,598,000 were issued, bearing date the first day of January, 1867, and maturing by the terms thereof, on the first day of January, 1897.

Said bonds, to the amount of $1,920,000 were issued, bearing date the first day of July, 1867, and maturing, by the terms thereof, on the first day of July, 1897.

5862 Said bonds, to the amount of $5,999,000, were issued, bearing date the first day of January, 1868, and maturing by the terms thereof, on the first day of January, 1898.

Said bonds, to the amount of $8,837,000, were issued, bearing date the first day of July, 1868, and maturing, by the terms thereof, on the first day of July, 1898.

Said bonds, to the amount of $2,400,000, were issued, bearing date the first day of January, 1869, and maturing, by the terms thereof, on the first day of January, 1899.

5. *Execution of First Mortgage, November 1, 1865. Supplemental Mortgage, March 21, 1868.* That, pursuant to and in accordance with the powers conferred upon it by said legislation, and pursuant to due corporate action and for the purpose of securing the payment of the bonds aforesaid, issued and to be issued, with the interest due and to grow due thereon, and for other lawful considerations, the said The Union Pacific Railroad Company did duly make and execute under its corporate seal and did deliver to Edwin D. Morgan of the City of New York, and Oakes Ames, of Easton, in the State of Massachusetts, as trustees, a mortgage or deed of trust dated the first day of November, 1865, wherein and whereby the said The Union Pacific Railroad Company did bargain, sell, assign, transfer and set over, enfeoff, convey and confirm unto the said Edwin D. Morgan and Oakes Ames, as Trustees, and in trust for the purposes aforesaid and to the survivor of them, and to their successor or successors, all and

singular, the railroad, telegraph, property and franchises in said mortgage described as follows:

5863 "All and singular the railroad and telegraph of the said party of the first part [the said Union Pacific Railroad Company], heretofore constructed, or hereafter to be constructed, from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms and provisions of said acts of Congress, to wit, at the City of Omaha, in the Territory of Nebraska; thence, as provided in said acts of congress, through the territories of the United States to the western boundary of the late territory of Nevada, together with all its lands, tenements, hereditaments, rights of way, and easements acquired or appropriated, or which shall be hereafter acquired or appropriated, for the purpose of a right of way for a single, double or other track, railroad and telegraph line, and for depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, superstructures, erections and fixtures, being necessary for the use of said railroad or telegraph; and also all and singular the franchises now owned, possessed or acquired, or which shall be hereafter owned, possessed or acquired, by the said party of the first part, for the purpose of building and operating said railroad and telegraph above specified and described; and also all the rails, depots, yards, engine-houses, car-houses, station-houses, warehouses, machine-shops, workshops and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired, by said party of the first part, necessary to said railroad and telegraph line, or the running and operating the same."

That subsequently and on or about the 12th day of March, 1868, the said The Union Pacific Railroad Company as thereto authorized by law and in pursuance of due corporate action, made

5864 and entered into an agreement or indenture supplemental to said mortgage of November 1st, 1865, with said Edwin D. Morgan and Oakes Ames, Trustees, dated the said 12th day of March, 1868, wherein and whereby the said The Union Pacific Railroad Company, for the consideration therein expressed, agreed with the said Edwin D. Morgan and Oakes Ames, trustees, for the benefit of all who then were or should thereafter be holders of said First Mortgage Bonds, and to and with the successors of said Trustees in the trust created by said indenture of mortgage of November 1st, 1865, that the principal of all of said First Mortgage Bonds, being one thousand dollars each, as well such as had then been issued as such as should thereafter be issued, should and would be paid by the said Railroad Company, whensoever they should respectively become payable according to the tenor thereof, in gold coin of the United States at par; that is to say, one thousand dollars of such coin for each of said bonds, and thereafter The Union Pacific Railroad Company or its successor Company, The Union Pacific Railway Company, caused to be stamped upon such of said First Mortgage Bonds, issued and secured by the

said mortgage of November 1st, 1865, as were presented for that purpose, a provision to the effect that the same should be payable in United States Gold Coin.

6. *Trustees in said First Mortgage.* That said Edwin D. Morgan and Oakes Ames duly accepted said mortgage of November 1st, 1865, and the trusts thereunder and continued to be and act as the trustees thereof until their deaths respectively. That on May 8th, 1873, the said Oakes Ames died, and on December 3d, 1873, Oliver Ames
5865 was duly appointed trustee in the place and stead of the said Oakes Ames; and the said Oliver Ames afterwards, to wit, on March 9th, 1877, died, and on June 1st, 1881, Frederick L. Ames was duly appointed trustee in the place and stead of the said Oliver Ames. That on February 14th, 1883, Edwin D. Morgan died, and on March 6th, 1883, F. Gordon Dexter, one of the aforesaid complainants, was duly appointed successor trustee in the place and stead of said Edwin D. Morgan. That on September 13th, 1893, Frederick L. Ames died, and on October 12th, 1893, Oliver Ames, 2d, one of the aforesaid complainants, was duly appointed trustee under said mortgage in the place and stead of said Frederick L. Ames. That each of the said trustees, original and successor, duly accepted the said mortgage and the trusts thereunder, and said F. Gordon Dexter and Oliver Ames, 2d, now are the trustees under said mortgage, and the said agreement of March 12th, 1868, supplemental thereto, and the said F. Gordon Dexter and Oliver Ames, 2d, have of right and as thereto duly authorized, instituted, and maintained this cause in which they are complainants, for the relief therein sought and herein decreed.

7. *Lien of First Mortgage; its extent and rank defined.* That the lien of the said First Mortgage of November 1st, 1865, is subject and subordinate to the right of the Government to have the preference, at all times, in the use, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the telegraph-line and railroad embraced in said mortgage for the transmission of dispatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon such railroad for the Government when-
5866 ever required by any department thereof.

And said First Mortgage is a lien subordinate and inferior to the title of the American Loan and Trust Company, as shown by the Equipment Trust Indenture of the Union Pacific Railway Company to the said American Loan and Trust Company, dated October 1st, 1887, to the extent and so far as the said Indenture affects the portion of the equipment therein embraced, which is hereinafter decreed to pertain to the mortgaged premises covered by said First Mortgage, and to the extent of the purchase money indebtedness herein found to be outstanding, as recited in said Equipment Trust Indenture.

And said First Mortgage is a lien subordinate and inferior to the lien of the Omaha Bridge Mortgage of the Union Pacific Railroad Company to John Edgar Thomson, John Pierpont Morgan and

Elisha Atkins as trustees, dated the 1st day of April, 1871, and to the indenture supplemental thereto, dated the 27th of September, 1871, and to the Omaha Bridge Renewal Mortgage executed by the Union Pacific Railway Company to the Central Trust Company of New York, as trustee, dated the 1st day of October, 1885, upon, to the extent and in respect of the premises embraced in and covered by the said Bridge Mortgages, and to the extent of the indebtedness thereby secured, as hereinafter found to be outstanding and unpaid.

That said First Mortgage of November 1st, 1865, is, with the exceptions last above stated and decreed, a valid and subsisting first mortgage and lien superior and paramount to any and every lien, estate, right, title, interest or claim of any person, party or corporation whomsoever, including the United States of America, upon all
5867 the railroad, telegraph, premises, rights, franchises, lands and property described in said mortgage, including the railroad, right of way, and railroad property of the Union Pacific Railway Company extending from the eastern terminus of the Union Pacific Railway on the east line of the said Railway Company's property between Twelfth Avenue and Thirteenth Avenue in Council Bluffs, Iowa, in a westerly direction to Twentieth Street in Omaha, Nebraska, including the railroad and railroad bridge across the Missouri River, and extending from the initial point of construction of the Union Pacific Railroad near the northeast corner of and within section 10, Township 15, range 13 east of the 6th principal meridian in Omaha, Nebraska, in a southerly and westerly direction through the City of Omaha to Twentieth Street in said City of Omaha at a junction with that part of said railroad from Council Bluffs aforesaid, and extending thence in a westerly direction through the counties of Douglas, Sarpy, Dodge, Colfax, Platte, Merrick, Hall, Buffalo, Dawson, Lincoln, Keith, Deuel, Cheyenne and Kimball in the State of Nebraska, and Sedgwick County in the State of Colorado, and the Counties of Laramie, Albany, Carbon, Sweetwater and Uintah in the State of Wyoming, and the Counties of Summit, Morgan Davis and Weber in the State of Utah, to a junction with the Central Pacific Railroad at a point five miles west of Ogden in the State of Utah, a distance of 1,042.41 miles of main line railroad; and also the rights of way, railroads and railroad tracks constituting spurs or branch lines of railroad extending from points of junction with the said main lines, (1) at a point about .6 of a mile west of what is known as Transfer Depot at Council Bluffs, in a northeasterly direction to what is known as the Broadway Depot
5868 in said city, a distance of 1.72 miles in the city of Council Bluffs; (2) at Almy Junction, Wyoming, in a northerly direction to a terminus at Mine No. Seven, a distance of 3.88 miles; (3) at Cheyenne, Wyoming, in a northwesterly direction to a connection with the track of the Union Pacific, Denver and Gulf Railway, a distance of 2.04 miles; (4) at a point on said main line in Omaha, Nebraska, northerly and easterly, a distance of 18,000 feet to certain ice houses and industries on what is known as Cut-off

Lake; also lots, yards, terminal grounds, shop grounds, streets and alleys, lands and tracts of land, tenements and hereditaments, easements and rights of way owned or acquired or appropriated by or for the Union Pacific Railroad Company, The Union Pacific Railway Company or the said Receivers for the purposes of said lines of railroad, including all lands so acquired or appropriated the title to which stands in the names of trustees for said The Union Pacific Railway Company; and also all lands acquired for or used for stations or for terminal purposes, and also all rights and estates, legal and equitable, of The Union Pacific Railway Company in and to all stations, depots and in and to all union depots upon or connected with the line of its railway or used in connection therewith, and including all the lands and other property described in the said report of the Special Master, and in the Schedules therein embraced, numbered 1, 2, 3, 4 and 5, all the said property being property owned, acquired or appropriated and necessary to the use and operation of the said railroad; also the shops, freight depots, general office building, roundhouses, depots, engine houses, car houses, station houses, machine shops, workshops, rails, switches, turnouts, spurs, side tracks, sidings and other structures and facilities upon said
5869 mortgaged premises, constructed, acquired or owned for the purposes of or in connection with said lines of railway; also the lands, interests and easements in lands, pipes, pump-houses, structures, pipe lines, appliances, facilities and easements of said company pertaining to the water supply upon or along said lines of railroad, and the tools, appliances, fixtures, materials, and supplies owned or acquired for the purposes thereof; also the locomotives, passenger cars, Pullman sleeping cars, dining cars, freight cars and other cars and all other equipment and rolling stock, owned by The Union Pacific Railway Company, and all interest of said The Union Pacific Railway Company in any other equipment or rolling stock, to the extent that said equipment and rolling stock so owned, or in which the said railway company has any interest, was acquired or provided for or by said railway company for the purposes of said railroad and mortgaged premises or is necessary for the running and operation thereof, the same being the undivided seventy per cent. of all the rolling stock or equipment owned by The Union Pacific Railway Company or in which said company has any interest; also all the lines of telegraph, telegraph material, instruments, fixtures and appliances belonging to the said railway company and located upon or used in connection with said mortgaged premises; also all furniture, fixtures, appliances, apparatus, supplies and material owned, acquired or provided by said Company for use in connection with said railroad and mortgage premises, located in the various offices of said railway company upon or remote from said railroad, including the offices of said company in the cities of Omaha, Nebraska, and Boston, Massachusetts, and also all the property of said Union
5870 Pacific Railway Company and all its rights and interests in and to property of every kind and nature, whether of the

character herein described or otherwise, and the corporate rights and franchises of said The Union Pacific Railroad Company or its successor The Union Pacific Railway Company, so far as such property, rights, interests and franchises pertain to the said railroad, telegraph and mortgaged premises; also all the moneys, credits and property not herein otherwise specified, in the possession of or under the control of the said Receivers in this cause, or to which said Receivers are or may be entitled, which have been or may be derived by said Receivers from or on account of said mortgaged premises, or from the sale or other disposition of any of said mortgaged property or from the operation of the said mortgaged premises by said Receivers, subject to the charges of the Receivers in respect thereof.

8. *Default of Railway Company under First Mortgage.* That the defendant The Union Pacific Railway Company made default in the payment of all of the interest, and of the coupons representing such interest, which became due upon its said First Mortgage Bonds on the first day of July, 1894, although payment of interest due on that date was duly demanded by holders of said bonds, and said default continued in whole until the 27th day of November, 1894, when an amount equal to the face of the interest coupons matured July 1st, 1894, was paid to the holders thereof, but no interest then accrued upon said coupons was paid, although payment of such accrued interest was demanded, and all of the interest upon said defaulted coupons matured on the 1st day of July, 1894, remains unpaid,
5871 together with interest thereon from the said 27th day of November, 1894. And the said The Union Pacific Railway Company made default in the payment of each subsequent semi-annual installment of interest which fell due upon said Bonds at the times of the maturity thereof, respectively although payment of each of said installments was duly demanded; but said semi-annual installments of interest were, under orders of this Court, paid by the defendant Receivers, together with interest upon such installments, as follows: the installment due on the 1st day of January, 1895, was paid by the said Receivers on the 20th day of January, 1896; the installment due on the 1st day of July, 1895, was paid by the said Receivers on the 8th day of May, 1896; the installment due on the 1st day of January, 1896, was paid by the said Receivers on the 25th day of September, 1896; the installment due on the 1st day of July, 1896, was paid by the said Receivers on the 19th day of November, 1896, and the installment due on the 1st day of January, 1897, was paid by the said Receivers on the 2d day of March, 1897, and the installment due on the 1st day of July, 1897, was paid by the said Receivers on the 26th day of July, 1897.

That of the said bonds secured by said first mortgage of November 1st, 1865, six thousand four hundred and seventy-five (6,475), in the principal amount of six million four hundred and seventy-five thousand dollars ($6,475,000), became due and payable on the first day of January, 1896, and payment thereof was duly demanded; and that of said bonds one thousand five hundred and ninety-eight (1,598), in

the principal amount of one million five hundred and ninety-eight thousand dollars ($1,598,000), became due and payable on the first day of January, 1897, and payment thereof was duly de-
5872 manded; and that of said bonds one thousand nine hundred and twenty (1,920), in the principal amount of one million nine hundred and twenty thousand dollars ($1,920,000), became due and payable on the first day of July, 1897.

That the said The Union Pacific Railway Company made default in the payment of the said principal amounts of said bonds which matured on the first day of January, 1896, and on the first day of January, 1897, and on the first day of July, 1897, as aforesaid; and that the same remain due and unpaid, and the following amounts are now due and payable at the date of this decree for unpaid interest on the said coupons which matured July 1st, 1894, and for principal of said outstanding First Mortgage bonds already matured and accrued interest thereon, viz:

For unpaid interest on coupons of July 1, 1894	$19,877.17
For principal of bonds matured	9,993,000.00
For accrued interest on matured principal	46,634.00
Total	$10,059,511.17

That certain coupons pertaining to some of said First Mortgage bonds have never been presented for payment and remain unpaid, and certain semi-annual accrued interest upon said First Mortgage bonds now matured has never been demanded or collected by the holders thereof, and such unpresented and unpaid coupons and such unpaid interest upon said unpresented matured bonds amount to the sum of $102,930.

9. *Issue of Subsidy Bonds of the U. S. Amount and Description thereof.* That, beginning on February 1st, 1866, under and in pursuance of the legislation aforesaid, there were issued and delivered by the Secretary of the Treasury of the United States to the said The Union Pacific Railroad Company bonds of the United States (hereinafter termed Subsidy Bonds), of one thousand dollars
5873 each, payable in thirty years after date, bearing six per centum per annum interest, payable semi-annually in lawful money and legal tender of the United States, to the amount of $27,236,512, all of which bonds were of the tenor and effect described in said Acts of Congress of the United States, approved July 1st, 1862, and July 2d, 1864, and were issued and delivered by the said Secretary of the Treasury to the said Railroad Company as, in the manner, and upon the conditions prescribed in said Acts, and the issue of said bonds and the delivery thereof to the said Company did, by force of law, ipso facto constitute a mortgage on the whole line of railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, including all the rights, franchises and appurtenances thereunto belonging, and in consideration of which said bonds were issued, which said lien of the United States was, by the provisions of said Act of Congress of July 2d, 1864, made subordinate to the lien of first mortgage bonds authorized to be issued upon the

railroad and telegraph lines of said The Union Pacific Railroad Company to an amount not exceeding the amount of the said subsidy bonds of the United States on its road, property and equipments, except as to such provisions of the sixth section of said Act of July 1st, 1862, which reserved to the United States a preference in the use of the said railroad and telegraph line for the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service.

That the subsidy bonds of the United States so issued and
5874 delivered by the Secretary of the Treasury of the United States to The Union Pacific Railroad Company, in pursuance of the acts of the Congress of the United States aforesaid, bore, respectively, the dates of issue, were issued in the respective amounts, matured and will mature at the respective dates, and bore interest from the respective dates, as appears in the following tabulated statement thereof, to wit:

Maturity of bonds.	Date of issue.	Commencement of interest.	Amount.	Total.
February 1, 1896	Feb. 1, 1866	Feb. 1, 1866	$640,000	
	May 7, 1866	May 7, 1866	400,000	
	June 26, 1866	June 26, 1866	640,000	
	July 13, 1866	July 13, 1866	320,000	
	Aug. 9, 1866	Aug. 9, 1866	560,000	
	Sept. 11, 1866	Sept. 11, 1866	720,000	
	Oct. 15, 1866	Oct. 13, 1866	560,000	
	Nov. 8, 1866	Nov. 7, 1866	480,000	
January 1, 1897	Jan. 9, 1867	Jan. 8, 1867	560,000	
	June 11, 1867	June 10, 1867	640,000	
	July 6, 1867	July 6, 1867	640,000	
	Aug. 29, 1867	Aug. 29, 1867	560,000	
	Oct. 2, 1867	Oct. 2, 1867	560,000	
	Nov. 5, 1867	Nov. 5, 1867	560,000	
	Dec. 13, 1867	Dec. 13, 1867	320,000	
January 1, 1898	Jan. 28, 1868	Jan. 27, 1868	957,000	
	May 18, 1868	May 16, 1868	960,000	
	May 19, 1868	May 18, 1868	960,000	
	June 12, 1868	June 12, 1868	960,000	
	June 17, 1868	June 18, 1868	960,000	
5875	July 23, 1868	July 22, 1868	960,000	
	July 25, 1868	July 24, 1868	1,841,000	
	Aug. 12, 1868	Aug. 11, 1868	640,000	
	Aug. 29, 1868	Aug. 28, 1868	640,000	
	Sept. 7, 1868	Sept. 7, 1868	1,280,000	
	Sept. 23, 1868	Sept. 23, 1868	640,000	
	Oct. 22, 1868	Oct. 21, 1868	640,000	
	Nov. 20, 1868	Nov. 19, 1868	640,000	
	Dec. 7, 1868	Dec. 7, 1868	1,280,000	
	Dec. 15, 1868	Dec. 14, 1868	640,000	
	Dec. 17, 1868	Dec. 16, 1868	640,000	
	Dec. 24, 1868	Dec. 23, 1868	640,000	
	Dec. 24, 1868	Dec. 24, 1868	640,000	
	July 15, 1870	Nov. 21, 1868	1,512	
January 1, 1899	Jan. 29, 1869	Jan. 29, 1869	640,000	
	Feb. 10, 1869	Feb. 10, 1869	1,280,000	
	July 22, 1869	July 16, 1869	640,000	
	Nov. 10, 1869	July 16, 1869	437,000	
	July 14, 1870	July 16, 1869	160,000	
Total				$27,236,512

That said subsidy bonds so issued by the United States to said railroad company were by said railroad company sold, and the proceeds of such sales were by said railroad company applied to its own use in aid of the construction and equipment of its said railroad.

10. *Lien of the subsidy bonds: Its extent and rank defined.* That the provisions of the original, amended and supplemental Acts of Congress hereinbefore and in the answer of the defendant the
5876 United States of America referred to, and the issue and delivery of said Subsidy Bonds, as provided in said Acts of Congress, create and constitute a mortgage and lien, as in said Acts of Congress provided, in favor of the United States, to secure the repayment to the United States of the amount of said Subsidy Bonds so issued and delivered to said The Union Pacific Railroad Company, together with all interest thereon which shall have been paid by the United States, which said mortgage and lien are herein designated the Subsidy Lien.

Said Subsidy Lien is junior, inferior, and subordinate to the title and right of the American Loan and Trust Company, as trustee of the Equipment Trust Indenture of the Union Pacific Railway Company, dated October 1st, 1887, to the extent and so far as the said Indenture affects the portion of the equipment therein embraced which is herein decreed to pertain to the mortgaged premises covered by said First Mortgage of November 1st, 1865, and to the extent of the purchase money indebtedness herein found to be outstanding under said Equipment Trust Indenture; and said subsidy lien is junior, subordinate, and inferior to the lien of the Omaha Bridge Mortgages of April 1st, 1871, and September 27th, 1871, and of said Omaha Bridge Renewal Mortgage of October 1st, 1885, as to all of the premises in said Bridge Mortgages embraced and to the extent of the indebtedness outstanding and unpaid secured by the said Bridge Mortgages, as hereinafter found; and said Subsidy Lien is subordinate, junior, and inferior to the lien of the said First Mortgage of November 1st, 1865, and to the lien of the bonds secured by said First Mortgage, as to all the railroad, equipments and rolling
5877 stock, telegraph lines, premises, franchises, rights, functions, immunities, and appurtenances thereunto belonging, lands and property hereinbefore in Article 7 hereof described as embraced in and covered by said First Mortgage; subject, however, to the right of the Government to have the preference at all times in the use at fair and reasonable rates of compensation not to exceed the amount paid by private parties for the same kind of service, of the said telegraph line and railroad for the transmission of dispatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the Government whenever required by any department thereof.

11. *Maturity of Subsidy Bonds.* That of said Subsidy Bonds of the United States so issued and delivered to the said The Union Pacific Railroad Company by the Secretary of the Treasury of the United States $4,320,000 of the principal thereof matured on February 1st, 1896, and the same, together with all interest then due thereon, were then paid by the United States, and $3,840,000 of the principal thereof matured on January 1st, 1897, and the same, to-

gether with all interest then due thereon, were then paid by the United States.

$19,076,512 of the said Subsidy Bonds of the United States remain outstanding and unpaid, of which $15,919,512 will mature on January 1st, 1898, and $3,157,000 will mature on January 1st, 1899.

That all of the interest on all of said subsidy bonds of the United States has been paid by the United States as the same has from time to time matured.

5878 12. *Payments on Subsidy Debt by Government transportation.* That sums of money have been paid to and received by the United States, and further sums of money, representing compensation earned by the Union Pacific Railroad Company and the said The Union Pacific Railway Company and the said Receivers for the performance of service for the Government, have been lawfully retained by the United States, and a portion of the sums so received and retained have been credited to what is known as the "Bond and Interest Account," and said portion of the said sums so credited aggregated on the 30th of April, 1897, the amount of $16,262,140.53, which last-mentioned amount the said The Union Pacific Railroad Company and its said successor The Union Pacific Railway Company were entitled to have credited and which have been by the United States credited towards and in partial repayment of the interest paid by the United States upon said Subsidy Bonds; and further sums representing such earnings have been likewise lawfully retained by the United States, which have been credited to said Union Pacific Railway Company or with which said company is entitled to be credited, but the extent whereof is incapable of exact statement at the date of this decree, but such credits and the current additions to the Sinking Fund hereinafter mentioned have not exceeded the accumulation of the subsidy debt.

The total amount of indebtedness on account of said subsidy bonds, matured and unmatured, for principal and interest, after deducting the said amount received by the United States upon said interest account was, on April 1st, 1897, as nearly as such account can be now stated,

For principal	$27,236,512
For balance of interest account	30,525,918
Total	57,762,432

5879 13. *Sinking fund: Amount thereof.* That under and in pursuance of the provisions of the Act of Congress of the United States, approved May 7th, 1878, of said sums of money so paid to and received by the United States and of said sums of money representing compensation for the performance of service to the Government so retained by the United States, $19,217,713.40 had, on the 31st day of December, 1896, been received in the Treasury of the United States and in part invested by the Secretary of the Treasury in certain bonds which are held in and constitute in part the Sinking Fund established by said last-mentioned Act of Congress, so far as

the same relates to the Union Pacific Railroad Company and its successor the Union Pacific Railway Company, and so far as the same is known as the United States Union Pacific Sinking Fund. That said United States Union Pacific Sinking Fund consists of cash and of bonds, and the bonds therein are as shown in the following tabulated statement, which statement also shows which of said bonds are not due and which of said bonds are due and the rates of interest, dates of maturity, dates when interest is payable and dates of last payment of interest as to each class of bonds embraced in said Sinking Fund.

5880 *Statement of Bonds in the United States Union Pacific Sinking Fund.*

Bonds.	Not due.	Due but unpaid.	Rate of interest (per cent).	Maturity of bond.	Interest payable (1st day of).	Date of last payment of interest.
U. S. 5% of 1904	$915,750		5	Feb. 1, 1904	Feb., May, Aug., Nov.	Feb. 1, 1897
U. S. 6% of 1898	523,000		6	Jan. 1, 1898	Jan., July..	Jan. 1, 1897
U. S. 6% of 1899	41,000		6	Jan. 1, 1899	Jan., July..	Jan. 1, 1897
FIRST MORTGAGE BONDS.						
Union Pacific due Jan. 1, 1896		$929,000	6	Jan. 1, 1896	Jan., July..	Jan. 1, 1897
Union Pacific due Jan. 1, 1897		350,000	6	Jan. 1, 1897	Jan., July..	Jan. 1, 1897
Union Pacific due July 1, 1897	473,000		6	July 1, 1897	Jan., July..	Jan. 1, 1897
Union Pacific due Jan. 1, 1898	1,534,000		6	Jan. 1, 1898	Jan., July..	Jan. 1, 1897
Union Pacific due July 1, 1898	2,536,000		6	July 1, 1898	Jan., July..	Jan. 1, 1897
Union Pacific due Jan. 1, 1899	545,000		6	Jan. 1, 1899	Jan., July..	Jan. 1, 1897
Central Pacific due Jan. 1, 1898	2,229,000		6	Jan. 1, 1898	Jan., July..	Jan. 1, 1897
Kansas Pacific due Aug. 1, 1895		549,000	6	Aug. 1, 1895	Feb., Aug..	Aug. 1, 1895
Kansas Pacific due June 1, 1896		929,000	6	June 1, 1896	June, Dec..	Dec. 1, 1894
Sioux City and Pacific due Jan. 1, 1898.	716,500		6	Jan. 1, 1898	Jan., July..	Jan. 1, 1897
Central Branch due May 1, 1895.		1,025,000	6	May 1, 1895	May, Nov..	Nov. 1, 1893
Western Pacific due July 1, 1899.	350,000		6	July 1, 1899	Jan., July..	Jan. 1, 1897
	9,863,250	3,782,000				
Total Bonds in Fund..		13,645,250				

5881 That the amount of uninvested cash held in and as a part of said United States Union Pacific Sinking Fund on April 30th, 1897, is the sum of $3.945,239.89, which said amount is now held in and as a part of said Sinking Fund, together with, and subject to be increased by, certain further amounts representing earnings for the performance of service for the Government credited and currently to be credited to the said Sinking Fund, the extent of which amounts is incapable of exact statement as of the date of this decree.

That said United States Union Pacific Sinking Fund so established, and as the same exists, is applicable to the payment and satisfaction of the Subsidy Bonds so issued and delivered by the United States to the Union Pacific Railroad Company and of all the interest paid by the United States thereon and not reimbursed, as and upon the conditions provided in said Act of May 7th, 1878.

14. *Default of Railway Company in respect of Subsidy Bonds.* That no part of the cost or expense of the payment of said subsidy bonds of the United States, which have been paid as hereinbefore

found, has been contributed by the said The Union Pacific Railroad Company nor by the defendant herein The Union Pacific Railway Company, except as herein stated, and no payment has been made nor security given on account of the principal of said subsidy bonds by said original or successor company (otherwise than as such security has resulted from the operation of law) except such security as is constituted by the Sinking Fund hereinbefore mentioned.

That the defendant The Union Pacific Railway Company has made default in the repayment to the United States of the
5882 amount of the Subsidy Bonds, so issued and delivered to the said The Union Pacific Railroad Company, which matured on the first day of February, 1896, and in the payment of the amount of the said Subsidy Bonds so issued and delivered which matured on the first day of January, 1897, and in the repayment to the United States of all of the interest paid by it upon said subsidy bonds which have so matured at the dates aforesaid, except to the extent of the repayment and reimbursement of such interest by the application of the amounts paid to and retained by the United States and credited to said Bond and Interest Account as hereinbefore found.

That the indebtedness of the said The Union Pacific Railway Company secured by said Subsidy Lien and which has matured and is now due to the United States for the repayment of the amounts paid by the United States upon the principal of said matured Subsidy Bonds, and for repayment of the interest paid by the United States upon said matured Subsidy Bonds in excess of the amount of said Bond and Interest Account heretofore applied as aforesaid to the payment of said interest, is as follows:

For the principal of subsidy bonds matured February 1st, 1896	$4,320,000.00
For interest paid thereon and unreimbursed on April 30, 1897	5,401,138.83
For the principal of subsidy bonds matured January 1st, 1897	3,840,000.00
For interest paid thereon and unreimbursed on April 30, 1897	4,928,490.35
Total amount of matured principal and unreimbursed interest on April 30, 1897	$18,489,629.18

5883 15. *Appearance of U. S.* That the said United States of America duly entered their appearance and became parties defendant to this cause by action of the Attorney-General of the United States duly had and taken on their behalf, pursuant to the authority provided by law and given by the direction of the President of the United States aforesaid.

16. *Land Grant and Income Bonds and Mortgage: Amount and lien thereof.* That the Union Pacific Railroad Company, under and in pursuance of the power and authority conferred upon it by the acts of Congress aforesaid, and for the purpose of paying certain outstanding land grant mortgage and income bonds made, executed and delivered its mortgage indenture known as its Sinking Fund Mortgage, dated on the 18th day of December, 1873, to The Union Trust Company of New York, Trustee, wherein and whereby, for the purpose aforesaid and for the purpose of securing the payment of the principal and interest of the coupon bonds of said company amount-

ing to the sum of Sixteen million dollars in gold coin of the United States, or three million two hundred thousand pounds British Sterling money, said coupon bonds being in number 16,000, and for the sum of one thousand dollars gold coin of the United States, or Two hundred pounds English Sterling money, numbered from 1 to 16,000, inclusive, the principal being payable on the 1st day of September, 1893, in gold coin, unless sooner redeemed, with interest at the rate of eight per cent. per annum current money of the United States, or seven per cent. British Sterling money, at the option of the holder, payable on the 1st day of March and the 1st day of September in each year, the said Union Pacific Railroad Company granted, bargained,
5884 sold, released, conveyed and confirmed to The Union Trust Company and its successor as trustee, all the right, title, estate and interest of the said Railroad Company of, in and to its railroad, extending from the City of Omaha, in the State of Nebraska, to a point about five miles west of the City of Ogden, in the Territory of Utah, and its appurtenances, together with all its lands, tenements, hereditaments, rights of way and easements acquired or owned, or which should be thereafter acquired or owned, for the purpose of a right of way for a single, double or other track, railroad, and for depots, engine houses, car houses, station houses, warehouses, machine shops, superstructures, erections, fixtures and appurtenances and property necessary or convenient for the use of said railroad; also all the rails, depots, yards, engine houses, car houses, warehouses, round-houses, machine shops, workshops and other structures and fixtures of the said party of the first part, and also all goods and chattels then owned, or which should thereafter be owned or acquired by said party of the first part, necessary or convenient to said railroad, or the running and operation of the same, or used or employed therein, or in connection therewith, subject, however, to said conveyance in trust and mortgage so made to the said Morgan and Ames, and also to the said lien or mortgage of the United States; also all and singular the lands granted to said Railroad Company by the said Acts of Congress, and also all the estate, right, title, interest, claim, and demand whatsoever, at law or in equity, of, in or to the same, or any part or parcel thereof, which the said Railroad Company then held, owned, or was entitled to, or thereafter might or should acquire, have,
hold, own, or be or become entitled to by force or virtue of said
5885 Acts of Congress, saving and excepting all parts and parcels of said lands which should have been, previous to the execution of this said mortgage, conveyed or contracted to be conveyed by said Railroad Company to purchasers thereof.

That under the terms and provisions of said Sinking Fund Mortgage and in accordance therewith said Railroad Company issued its bonds secured thereby in the total amount of 16,000,000, which bonds were duly certified by said trustee and were sold by said Railroad Company, and the proceeds derived from such sale were by it applied according to the terms and provisions of said mortgage.

That there had been, on August 9th, 1893, paid and canceled of said bonds so issued under said mortgage $11,838,000 of the principal thereof together with the interest thereon, and on said last-mentioned date said Railway Company entered into an agreement with said Union Trust Company of New York, as trustee, providing for the extension of the time of payment of said bonds then remaining unpaid until the first day of September, 1899. That there are now outstanding of said bonds secured by said mortgage of December 18th, 1873, 3,738 bonds, and that said company is in default in the payment of the interest on said bonds which matured on the first day of September, 1896, and in the payment of each and every installment of interest on said bonds thereafter matured, and that the amount of the outstanding principal of said bonds and of the matured interest thereon is as follows:

Principal of said Sinking Fund bonds outstanding	$3,738,000
Unpaid coupons thereon at their face	298,400

That said Sinking Fund Mortgage is, to the extent that it includes any railroad, property and franchises embraced in said
5886 First Mortgage of November 1st, 1865, and in said Omaha Bridge Mortgages of April 1st, 1871, and September 27th, 1871, and in said Omaha Bridge Renewal Mortgage of October 1st, 1885, a lien subject, inferior and subordinate to the right and title of the American Loan and Trust Company, trustee of said Equipment Trust Indenture of October 1st, 1887, and to the lien of said First Mortgage of November 1st, 1865, and to the lien of the said several Omaha Bridge Mortgages and to the Subsidy Lien of the United States, and said Sinking Fund Mortgage is a first and paramount lien upon all the lands described in said mortgage which were derived from the land grant to the Union Pacific Railroad Company.

And the Court hereby reserves for other or further proceedings and decree all rights and equities of the trustee of the said Sinking Fund Mortgage and of the holders of bonds secured thereby not herein determined or adjudged and not barred and foreclosed by the sale hereinafter provided to be made.

17. *Omaha Bridge Mortgages: amount, extent and rank defined.* That The Union Pacific Railroad Company under and in pursuance of the power and authority conferred upon it by the said Acts of Congress of the United States approved July 1st, 1862, and July 2nd, 1864, and the Act of Congress approved February 24th, 1871, built and constructed as a part of its said line of railroad said bridge across the Missouri River between Omaha, in the State of Nebraska, and Council Bluffs in the State of Iowa, together with the approaches thereto and appurtenances thereof, and said Railroad Company for the purpose of purchasing and acquiring the lands and ma-
5887 terials necessary for the construction of the said bridge and its approaches and connecting lines, and for constructing the same, and pursuant to the authority of said Act of February 24th, 1871, and to due corporate action, issued its Bridge Bonds, each for the sum of one thousand dollars United States gold coin, or two hun-

dred pounds British sterling money, the principal of which was payable on the first day of April, 1896, unless sooner redeemed, with interest in the meantime from the first day of April, 1871, on the principal sum at the rate of eight per centum per annum, payable by half-yearly installments of forty dollars in United States gold coin, or eight pounds five shillings and nine pence British sterling money, each on the first day of October and first day of April in each year, upon presentation of the coupons attached to the said bonds; and, for the purpose of securing the payment of said bonds and interest, said Railroad Company, pursuant to like authority of law and corporate action, made, executed and delivered to John Edgar Thompson, John Pierpont Morgan and Elisha Atkins its mortgage dated on the first day of April, 1871, wherein and whereby it granted, bargained, sold, assigned, transferred, set over, enfeoffed, conveyed and confirmed to said Trustees and to their heirs and successors, and the survivors and survivor of them and the heirs of such survivor, all and singular the said bridge over the River Missouri between Omaha and Council Bluffs, and the approaches thereof and appurtenances belonging thereto, including all parts and portions of the said bridge then constructed or thereafter to be constructed and the depots at Council Bluffs and Omaha aforesaid, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and
5888 to connect the same with the neighboring lines, including in said conveyance as well the lines and tracks then constructed or those which might thereafter be constructed, and also all estates, terms and rights of way for the said bridge approaches and appurtenances as well, then held by the Company as to be thereafter acquired by it, and all the rights and privileges of the Company in, or to the said bridge, approaches or appurtenances, or touching and concerning or appertaining to the maintenance, use and occupation thereof.

That on or about the 27th day of September, 1871, said The Union Pacific Railroad Company made, executed and delivered to the said John Edgar Thompson, John Pierpont Morgan and Elisha Atkins, as trustees, its supplemental mortgage, bearing said last-mentioned date, in which supplemental mortgage it was provided, among other things, that all the said bonds should bear interest at the rate of two-fifths of one per cent. per annum, in addition to the annual eight per cent interest provided for in the said mortgage dated April 1st, 1871, which said interest of two-fifths of one per cent. should be paid in a gross of ten per cent. upon the nominal amount of the bond, when the principal of the bond became payable under the terms or conditions of said indenture, excepting always that those bonds which should be drawn and redeemed at ten per cent. per annum before maturity by the Sinking Fund should not carry said interest at two-fifths of one per cent.; and the trustees under said mortgage were authorized and empowered to retain and deduct and to pay and discharge such installment of interest out of any funds or moneys of the company coming into their hands.

That said bonds so issued and secured by said Bridge Mort-
5889 gage of April 1, 1871, and said supplemental mortgage of September 27th, 1871, are outstanding and unpaid in the face amount of $392,000, and that all said bonds matured and became due on or prior to April 1st, 1896, and that under the terms of the said mortgage and said supplemental mortgage the principal amount due on said bonds is the face amount thereof and ten per cent. in addition thereto. Being the amount of $431,000, together with interest at the rate of six per cent. per annum from the first day of April, 1897, to which date the interest upon said bonds has been paid.

That the said John Edgar Thompson, and Elisha Atkins, have since died, and the said John Pierpont Morgan, by survivorship, and Edwin F. Atkins, by due appointment, are now the Trustees under the said Bridge Mortgage of April 1st, 1871, and the supplemental indenture of September 27th, 1871.

Said Omaha Bridge Mortgage of April 1st, 1871, and said supplemental indenture of September 27th, 1871, subject only to the right and title of the American Loan & Trust Company, trustee of the Equipment Trust Indenture of October 1st, 1887, as hereinbefore found, constitute a first and paramount lien on the railroad, bridge, and premises therein embraced, and the sale hereafter provided to be made shall be made subject to the said Bridge Mortgages and the liens thereof and the rights of the holders of the bonds secured thereby.

Omaha Bridge Renewal Mortgage: Amount and rank defined. That the said The Union Pacific Railway Company thereafter, pursuant to like authority of law and to due corporate action, did, for the purpose of funding and renewing the debt then remaining unpaid secured by said Bridge Mortgages of the Union
5890 Pacific Railroad Company of April 1st, 1871, and September 27th, 1871, issue its certain bonds of one thousand dollars each, dated the first day of October, 1885, payable on the first day of October, 1915, in gold coin of the then present weight and fineness, and bearing interest at the rate of five per centum per annum, payable semi-annually on the first day of October and April in each year, in like gold coin, on presentation and surrender of the coupons therefor annexed to said bonds, and, likewise, pursuant to law and due corporate action, the said The Union Pacific Railway Company, in order to secure the payment of the principal and interest of said last-mentioned bonds, made, executed, and delivered to the Central Trust Company of New York, as Trustee, its mortgage or deed of trust, dated on the 1st day of October, 1885, and known as its Omaha Bridge Renewal Mortgage, whereby the said railway company granted, bargained, sold, assigned, transferred and conveyed unto the said Central Trust Company of New York, as Trustee, and to its successors and assigns, all and singular, the bridge, approaches and appurtenances thereto over the Missouri River, between Council Bluffs, Iowa, and Omaha, Nebraska, mentioned and described in

said act of Congress, approved February 24th, 1871, together with the rents, earnings, issues, tolls, incomes and profits thereof, including all parts and portions of said bridge then constructed, or thereafter to be constructed, and the depots at Council Bluffs and Omaha, aforesaid, and the railroad thereover, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the lines of any railroads that were then or should thereafter be constructed to the Missouri River
5891 at Council Bluffs, Iowa, or Omaha, Nebraska, and also all the estates, lines, rights of way, as well then held by the Company as to be thereafter acquired by it, and all the rights and privileges of the Company of, in or to the said bridge, approaches and appurtenances, or touching, concerning or appertaining to the maintenance, use and occupation thereof, and also all and singular the franchises then owned, possessed or acquired, or which should thereafter be owned, possessed or acquired by the said Railway Company in respect of said bridge, approaches or appurtenances thereto and the railroad thereover.

That there were certified and delivered to the said Railway Company $1,056,000 of said bonds, and of said bonds so certified and delivered $589,000 were negotiated and sold by said company and $145,000 were by said company pledged and remain pledged to secure certain of its indebtedness; and $322,000 of said bonds were undisposed of by said company and remained in its possession, and are now in the hands of the said Receivers and have never been issued and are not outstanding, and the said defendants Receivers and the defendant The Union Pacific Railway Company are hereby perpetually enjoined from issuing, negotiating or delivering the same, and, in the event of the confirmation of any sale of the railroad property made as herein provided, they are hereby further ordered and directed to cancel the said bonds.

That the amount of the outstanding principal of said bonds secured by said Omaha Bridge Renewal mortgage of October first, 1885, and the amount of the unpaid coupons on said outstanding bonds are as follows:

5892

Principal amount of bonds sold and disposed of by said Railway Company	$734,000
Interest thereon from April 1st, 1894, to April 1st, 1897	110,100
Total	$844,100

Said Omaha Bridge Renewal Mortgage of October 1st, 1885, and the bonds outstanding and unpaid secured thereby, constitute a lien on the railroad, bridge and premises therein embraced, subject only to the right and title, as hereinbefore defined, of The American Loan and Trust Company, as trustee of the said Equipment Trust Indenture of October 1st, 1887, and to the lien of the said Omaha Bridge Mortgages of April 1st, 1871, and September 27th, 1871, and superior and paramount to the liens, claims or charges of any party to this cause, except the trustees of said Omaha Bridge Mortgages; and the sale hereafter provided to be made, shall be made subject to the said

Omaha Bridge Renewal Mortgage, and the lien thereof and the rights of the holders of the bonds secured thereby.

19. *Insolvency of Railway Company: Mortgaged premises indivisible.* That in addition to the sums hereinbefore found to be due from and owing by said defendant Railway Company, said Company is indebted in large sums, of which the payment is overdue, and it has made default in the payment thereof and is unable to pay the same and is wholly insolvent, and it is for the best interests of all concerned that all the said railroad properties and franchises, rights, functions, immunities and appurtenances of the said railway company embraced in and covered by the lien of the complainants should be sold and that the provisions hereof be made for the
5893 payment of the indebtedness of said railway company according to the respective liens and equities of the holders thereof. That the railroad, telegraph, appurtenances, rolling stock, equipment and other property and franchises, rights, functions, immunities and appurtenances of said defendant Railway Company embraced in said First Mortgage or upon which said First Mortgage is a lien are indivisible and so situated and are of such a nature that the same cannot be sold in parcels without great injury to all the parties in interest and that it is expedient that the same shall be sold as an entirety, as hereinafter provided.

20. *Payment decreed. It is further Ordered, Adjudged and Decreed*, that the defendant The Union Pacific Railway Company pay, or cause to be paid, within twenty days after the entry of this decree to the said F. Gordon Dexter and Oliver Ames, 2nd, trustees, for the use and benefit of the holders of the First Mortgage Bonds of the Union Pacific Railroad Company issued under and secured by said First Mortgage of November 1st, 1865, the amount hereinbefore found to be due for principal and interest on said First Mortgage Bonds and coupons, namely, the sum of $10,162,441.17, with interest thereon from the date of this Decree to the date of payment.

In case the said amount shall be paid or caused to be paid by The Union Pacific Railway Company as herein decreed, then any of the parties to this cause may apply to this Court for such further relief and for such further directions as may be just and equitable.

21. *Foreclosure and Sale ordered. It is further Ordered, Adjudged and Decreed*, that in default of such payment by the
5894 defendant the said The Union Pacific Railway Company, or by some one claiming under it, or by some one for its account, or by some of the defendants herein, within the time directed as aforesaid, all the railroads, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock and property of every kind and description embraced in and covered by said First Mortgage of November 1st, 1865, shall be sold as hereinafter directed, and all the right, title, estate, interest and equity of redemption of the said defendant The Union Pacific Railway Company and of all persons claiming, or to claim, under it and of F. Gordon Dexter and Oliver Ames, 2nd, Trustees, and of the United States

of America, and of each and every defendant in this cause, of, in or to the said railroad, telegraph, franchises, rolling stock and property, and every part and parcel thereof, embraced in and covered by said First Mortgage of November 1st, 1865, shall be forever absolutely barred and foreclosed, saving only the rights and title of the American Loan and Trust Company, trustee of the said Equipment Trust Indenture of October 1st, 1887, and the rights and liens of the trustees of the Omaha Bridge Mortgages of April 1st, 1871, and September 27th, 1871, and of the Omaha Bridge Renewal Mortgage of October 1st, 1885, and saving and excepting the right of the Government to have the preference at all times in the use at fair and reasonable rates of compensation not to exceed the amounts paid by private parties for the same kind of service over said telegraph line and railroad for the transmission of despatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Govern-
5895 ment whenever required by any department thereof.

The said property, covered by and embraced in said First Mortgage of November 1st, 1865, as the same is hereinbefore described and defined, shall be sold upon the conditions and in the manner hereinafter provided and directed, at public auction to the highest bidder or bidders upon the mortgaged premises, at the freight station of the Union Pacific Railway Company in the City of Omaha in the State of Nebraska on a day or days to be fixed by the Special Master hereinafter appointed, and public notice of such sale, and the time and place thereof, together with the manner and the terms upon which the said sale is to be conducted shall be given by the said Special Master by advertisement, which shall describe briefly the property to be sold, the time and place when and where the sale is to take place, and the conditions upon which it is to be conducted; which advertisement shall be published at least once a week for the term of four successive weeks preceding the day of sale, in at least one newspaper in each of the following cities—namely, New York City, New York; Boston, Massachusetts; Omaha, Nebraska; Denver, Colorado; Cheyenne, Wyoming; and Salt Lake City, Utah.

The Receivers shall file with the Clerk of the Court, at Omaha, within ten days after the entry of this decree, an approximate statement, as nearly correct as they are able to make the same, of the amount of moneys in their hands, the amount of moneys owing to them, all their liabilities, fixed and contingent, resulting from the operation of the mortgaged premises, as they will be at the time of the sale, and the Master shall insert a brief summary of this statement in his notice of sale.

5896 22. *Manner and Terms of Sale.* Said sale shall be made in the following manner and upon the following terms:

Said property shall be sold as an entirety and in one parcel.

The Special Master shall have the power and right to postpone the said sale from time to time, and may, without further notice, proceed with the said sale on any day to which the sale may have been adjourned, and may, at his option, give such further notice of sale, in addition to the notice above described, as he may think proper.

The Special Master shall receive no bid from any one offering to bid who shall not have deposited with him at his office in Omaha, Nebraska, at least five days before the date of the sale mentioned in the Special Master's published notice, as a pledge that he will make good his bid in case of its acceptance, the sum of $2,000,000, at least one half of which shall be cash and the other half of which may be first mortgage bonds secured upon this property.

The Special Master shall accept no bid for said railroad, franchises and property less than the sum of $50,637,435.00, and unless such sum shall be bid the Special Master may adjourn the sale, and apply to the Court for further instructions.

Upon the acceptance of any bid, the person or persons making the same shall forthwith deposit with the Special Master, on account thereof, a further sum, in cash or first mortgage bonds secured upon this property, which together with those which he or they have already deposited as a pledge shall equal fifteen per cent. (15%) of the accepted bid.

In case any bidder shall fail to make good his bid upon its
5897 acceptance by the Special Master by making within five days after such acceptance the additional deposit with or subject to the order of the Master as hereinbefore provided, or, after the confirmation of said sale, shall fail to pay as hereinafter provided, the balance due upon his said bid in consummation of his purchase, then the sums in cash and bonds deposited by such bidder or purchaser, as hereinbefore provided, shall be forfeited as a penalty for such failure, and shall be applied towards payment of the expenses of a resale and towards making good any deficiency or loss in case the property shall be sold at a less price upon such resale, and to any other and further purposes which the Court may direct.

Any party to this cause or any holder or holders of any of said First Mortgage bonds may bid and purchase at such sale.

If any sale for which a deposit has been made shall not be confirmed by the Court, such deposit shall be returned to the bidder, and the deposit of any unsuccessful bidder shall be returned to him when a bid has been accepted.

23. *Payments by the purchaser.* The purchaser whose bid shall have been accepted by the Special Master at said sale shall make payments in cash, or in cash and first mortgage bonds of the sum remaining due upon his said bid after the application thereto of the amounts theretofore deposited by him, as follows:

Twenty-five (25%) per cent. of said amount so remaining due on said bid shall be paid within thirty days after the confirmation of the sale; a further twenty-five (25%) per cent. of said amount shall
be paid within forty days after such confirmation; a further
5898 twenty-five (25%) per cent. of said amount shall be paid within fifty days after such confirmation; and a further twenty-five (25%) per cent. of said amount shall be paid within sixty days after such confirmation: Provided, however, that the purchaser shall have the right to anticipate all or either of said payments by making the

same, or any of them, at an earlier time, or earlier times, than herein fixed.

Said First Mortgage Bonds, to the extent that they shall be tendered to the Master in payment of said bid, shall be accepted and taken by him in such payment at the par value thereof, together with interest unpaid and accrued thereon to the date of this Decree, and such purchaser shall be credited therefor, on account of the purchase price, such sum in cash as shall be represented by the principal of said bonds and such unpaid and accrued interest thereon, and the Master shall stamp such bonds paid, and cancel them.

Such part of the purchase price as shall not be paid in said First Mortgage Bonds shall be paid in cash.

Any deposits or payments required by the terms of this decree to be made in cash may be made by delivery of a certified check or checks or a certificate or certificates of deposit upon any national bank or trust company in favor of or to the order of the said Special Master and satisfactory to him.

The proceeds of the accepted bid shall be applied:

1. To the payment of the First Mortgage bonds, whether due or not, secured by said First Mortgage of November 1st, 1865.

2. To the payment of the amount owing to the United States, whether due or not, secured by its Subsidy Lien, until said Subsidy Debt is paid in full, and the surplus, if any, shall be
5899 distributed by subsequent orders of the Court: provided, however, that in the event that a sale shall be made under any decree rendered in the case of the United States of America against the Union Pacific Railway Company and others, pending in this Court, to enforce the subsidy lien of the United States before any sale under this decree, and if such sale under the decree in the case of United States against The Union Pacific Railway Company and others shall be confirmed, then any surplus of the purchase money for the property and premises sold under the decree in this cause, after the payment in full of the first mortgage debt, shall be paid to the Master for account of the purchaser or purchasers at such sale under said Subsidy Lien in the said suit of the United States against The Union Pacific Railway Company and others, and shall be paid over to such purchaser or purchasers, or his or their assigns, on proper application and order of the Court therefor.

The successful bidder shall pay to the Master in first mortgage bonds and cash, or one of them, an amount sufficient to pay all the First Mortgage bonds and interest to the date of this decree, and if the balance of his bid is applicable under the preceding provision hereof to the payment to the United States of the Subsidy Debt the purchaser may pay such balance to the Master or to the United States and the receipt of the Secretary of the Treasury, or his proper subordinate for any part of such balance shall be sufficient evidence of its payment.

The Master may in his discretion accept temporarily, instead of the manual delivery of the bonds, the certificate of any trust com-

5900 pany which he may select, or certificate of the Secretary of the Treasury, that it or he holds First Mortgage bonds secured by the mortgage of November 1st, 1865, subject to the order of the Master, and will deliver them to him on demand for cancellation or other disposition.

24. *Obligations assumed by the purchaser.* The purchaser or purchasers, or his or their successors or assigns, shall, as part consideration and purchase price of the property purchased, and in addition to the sums heretofore required to be paid, and paid, take the same and receive the deed therefor upon the express condition that he or they, or his or their successors or assigns, shall pay, satisfy and discharge:

First. All the proper costs of this cause and of the expenses of the sale hereunder, including the compensation and necessary expenses of the Special Master appointed to make the sale.

Second. Any unpaid compensation which has been or shall be allowed to the Receivers in this cause, or their solicitors, and any unpaid indebtedness and liability of the Receivers incurred in the management and operation of the mortgaged premises, since October 13, 1893, which is either established or unquestioned at the time of the delivery of the Master's deed.

Third. The charges, compensation, allowances and disbursements of the Complainants and any of the other parties to this cause, entitled thereto, their solicitors and counsel.

Fourth. A sum equivalent to interest at the rate of six per cent. per annum from the date of this decree to a date of payment to be fixed by the Special Master upon the entire amount of First Mortgage bonds which shall not have been presented by the purchaser on account of his bid.

5901 Fifth. The payment of all First Mortgage coupons and accrued interest on matured First Mortgage bonds now unpaid, to the amount of $102,930 as found in Article Eighth hereof, which shall not have been paid at the time of the delivery of the property to the purchaser.

Sixth. All unpaid indebtedness and obligations, if any such there be, which have been legally contracted or incurred by the Receivers in this cause in the operation or on account of the property embraced in said First Mortgage of the Union Pacific Railroad Company at any time before the same shall be delivered to the purchaser or purchasers; and also any such unpaid compensation which has been or shall be allowed by the Court to the Receivers or their solicitors in the cause in which Oliver Ames, Second, Samuel Carr and others are complainants, and The Union Pacific Railway Company and others are defendants, pending in this Court, and known as the "Ames cause" and all such unpaid indebtedness, obligations and liabilities of the said Receivers in said Ames cause which shall have been allowed or legally contracted or incurred by the said Receivers in the operation of said property embraced in said First Mortgage and shall be properly chargeable to said property, to the extent to which the

revenues and assets in the hands of said Receivers in said Ames cause shall be insufficient to pay and discharge such compensation, indebtedness, obligations and liabilities in said cause.

Seventh. Any indebtedness or liability contracted or incurred by the defendant The Union Pacific Railway Company, or by the said Receivers in the said Ames Cause, in the operation of the property covered by and embraced in the said First Mortgage of
5902 November 1st, 1865, prior to the appointment of the Receivers in the cause herein in which Dexter and Ames are complainants, which are prior in lien to said First Mortgage, and payment whereof was provided for by order of this Court, dated January 21st, 1895, in this cause, and which shall not at the time of such delivery of possession, have been paid or satisfied out of the income of the property in the hands of the Receivers, upon the Court adjudging the same to be prior in lien to said First Mortgage, and directing payment thereof; provided that suit be brought for the enforcement of such indebtedness or liability incurred by said Railway Company or Receivers within the period allowed by the statute of limitations applicable thereto, after such indebtedness or liability was contracted or arose.

The costs, compensation, allowances and disbursements specified in the first three subdivisions of this article will be paid by the purchasers when they are fixed by the Court. The purchaser, his successors or assigns, shall pay any of the claims described in this order when by the Court required, or shall pay to the Master or into Court the moneys required to discharge the same from time to time as the Court may direct. And this Court reserves the right and retains the power and jurisdiction to take back and resell the mortgaged property in case the purchaser, his successors or assigns, fail to pay any of said claims when by it required, and in case it or they fail to pay any other part of the purchase price of this property.

In the event that the said purchaser or purchasers, or his or their assigns, shall refuse, after demand, to pay any indebtedness or liability specified in the Fourth, Fifth, Sixth and Seventh
5903 subdivisions of this Article, the person holding the claim therefor, whether established in a State Court or any other Court of competent jurisdiction, may, upon fifteen days' notice to said purchaser or purchasers, their successors or assigns, file his petition in this Court to have the said claim enforced against the property aforesaid in accordance with the usual practice in claims of a similar character; and such purchaser or purchasers, his or their successors or assigns, shall have the right to appear and make defense to any claim, debt or demand so sought to be enforced, and either party shall have the right to appeal from any judgment, decree or order made thereon or with respect thereto. Jurisdiction of this cause is retained by this Court for the purpose of the foregoing provisions of this Decree, and the Court reserves the right to retake and resell said property in case the purchaser or purchasers, his or their successors or assigns, shall fail to comply with any order of this Court

in respect to the payment of such prior indebtedness or liability within thirty days after service of a copy of judgment, decree or order requiring such payment, subject, however, to all rights of appeal, and stay of proceedings provided by law or which are hereinafter set forth.

Such purchaser or purchasers, and his or their successors or assigns, shall have the right to enter his or their appearance in this Court or in any other Court, and he or they or any of the parties to this cause shall have the right to contest any claim, demand or allowance existing at the time of the sale, then undetermined, or any claim or demand which may arise or be presented thereafter which would be payable by such purchaser or purchasers, his or their successors or assigns, or which would be chargeable against the property purchased in addition to the amount paid by said purchasers at such sale, and may appeal from any decision relating to any such claim, demand or allowance, and shall have and enjoy all rights to stay or supersedeas as fully as if a party thereto.

5904

25. *Master's Deed: its effect. It is further Ordered, Adjudged and Decreed*, that, upon payment of the purchase price by the purchaser or purchasers of said property, or upon the making of such provision for the payment thereof as the Court shall approve, the said Special Master making the sale shall execute and deliver a good and sufficient deed conveying all the said railroad, telegraph, rolling stock and property of every kind and description, including any property and income acquired or received by the Receivers as Receivers in this cause through the operation of the mortgaged premises and any property acquired by the Receivers in the Ames cause for or appropriated by them to the use of the railroad and telegraph covered by the said First Mortgage or necessary to the said railroad and telegraph line for running and operating the same, together with all the franchises, rights, functions, immunities and appurtenances belonging to the mortgaged premises, subject, always, to all the indebtedness and liabilities of the Receivers and the property specified in Article 24th of this decree, to such purchaser or purchasers, or his or their successors or assigns, and that upon the execution and delivery of such deed the grantee thereunder shall be let into possession of the premises conveyed, and that the said Receivers and any party to this cause who is in possession of any of the same shall deliver such property over to the purchaser or purchasers, his or their successors or assigns, together with any property acquired by the Receivers in this cause appertaining to the line of railroad in said mortgage mentioned, that has not been applied, or shall not be otherwise applied, in pursuance of the orders of this Court. Such possession shall nevertheless be subject to the condition that this Court may retake and resell the property conveyed, in case the purchaser or purchasers, his or their successors or assigns, shall fail to pay any balance of the purchase price remaining unpaid, or to comply with any other provision contained in this Decree.

5905

The purchaser or purchasers, his or their successors or assigns, shall have, enjoy and receive all revenues and compensation for services rendered to the Government or to any other parties or persons by the Receivers in the operation of the mortgaged premises subsequent to the date of sale.

The purchaser or purchasers, and his or their successors or assigns shall, after such delivery of the premises and property, hold, enjoy and possess the same and all the rights, privileges, immunities and franchises thereto appertaining, with the right to own, hold, enjoy, maintain and operate the said railroad and property as fully and completely as the Union Pacific Railroad Company held, owned or enjoyed the same at the time of the execution of the said First Mortgage, or at any time thereafter, and as fully as the defendant The Union Pacific Railway Company has heretofore held, owned or enjoyed or now holds, owns or enjoys the same, and the purchaser or purchasers, and his or their successors and assigns, shall thereupon be entitled to have and to hold the said premises so conveyed, by a
5906 full, absolute and indefeasible title, freed and discharged from all the mortgages, liens, claims and charges of each and every defendant herein and of all parties to this cause, saving and excepting the right and title as hereinbefore defined of the American Loan and Trust Company, as trustee of the Equipment Trust Indenture of October 1st, 1887, and the mortgage lien, claims and charges of the trustees of the Omaha Bridge Mortgages of April 1st, 1871, and September 27th, 1871, and of the trustee of the Omaha Bridge Renewal Mortgage of October 1st, 1885, and the holders of the outstanding and unpaid bonds issued under and secured by said Bridge Mortgages respectively, and saving and excepting also the right of the Government to have the preference at all times in the use at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the telegraph line and railroad for the transmission of despatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the Government whenever required by any department thereof; and saving and excepting the rights and liens of the parties secured by article 24 hereof, and said purchaser or purchasers, and his or their successors and assigns, after such delivery of the premises and property, shall have, receive, hold and enjoy all the earnings, income and proceeds of the operation, use or disposition thereof and all compensation for the transmission of despatches over said telegraph line, and the transportation of any persons or property over said railroad, for any persons, party or corporation, including the Government of the United States, freed and discharged from all liens, claims, and charges of each and
5907 every defendant herein, and of all parties to this cause and those claiming under them except as hereinbefore expressly provided.

26. *Deed by Railway Company and Trustees.* The defendant The Union Pacific Railway Company shall at the time of the execution

of the said deed by said Special Master, as a further assurance to the purchaser or purchasers, execute its deed, or join with said Special Master in the execution of the deed to be made by him, and shall thereby convey and release to the purchaser or purchasers and his or their successors or assigns all its right, title and interest in and to the property conveyed by said Special Master to the said purchaser or purchasers. And said Railway Company shall also execute and deliver to said purchaser or purchasers, or to his or their assigns, and shall unite in the execution and delivery of such further, separate and specific deeds and conveyances of lands, lots or other property, of which the title shall be held by or for it, described in the Master's report, hereby confirmed, as embraced in said First Mortgage as shall be by said Special Master approved as necessary or proper to complete or assure the title of the purchaser or to complete or facilitate the record evidence thereof.

The said complainants F. Gordon Dexter and Oliver Ames, as Trustees, under said First Mortgage of November 1st, 1865, hereby foreclosed, shall likewise at the time of the execution of said deed by the Special Master, transfer and release to such purchaser or purchasers and his or their successors or assigns, all their right, title and interest under the said First Mortgage in and to the property so conveyed; and the Receivers heretofore appointed in said Ames
5908 cause and in this cause shall make and deliver a sufficient deed, conveying and assigning to the purchaser or purchasers and his or their successors or assigns all their right, title and interest in, of or to any property vested or standing in their names or to which they have acquired title as such Receivers in the management and operation of the premises covered by and embraced in said First Mortgage so far as the same may be appurtenant to said premises.

27. *Special Master appointed. It is further Ordered, Adjudged and Decreed*, that Hon. William D. Cornish, of St. Paul, Minn., be, and he is hereby, appointed Special Master to execute this Decree and make the sale herein provided to be made, and to execute and deliver the deeds of conveyance of the property sold to the purchaser or purchasers thereof upon confirmation of said sale and payment of the purchase price thereof, as herein provided, and this Court reserves the right at any time to appoint another Master with the same powers as the one herein appointed, in case of the inability for any reason of the Special Master herein appointed to act or perform the duties of his office or in reference to his office. As soon as any sale has been made by such Special Master in pursuance of this Decree, he shall report the same to this Court for confirmation, and shall from time to time thereafter make such further and supplemental reports as shall be necessary to keep the Court and the parties to this cause properly advised of his proceedings in the execution of this degree.

28. *Duties of Special Master after Confirmation of sale.* Within ten days after the confirmation of the sale the Special Master, shall, by notice to the purchaser, fix a date not less than sixty nor more
5909 than ninety days then distant, for the payment of the sums

due, at the date so fixed, on bonds not prior to such date used on account of the purchaser's bid, or otherwise paid, and the purchaser shall, prior to the expiration of such period so fixed, furnish the Master with a sum of money equivalent to the interest on such unpresented bonds from the date of this Decree to the date of such payment so fixed by the Master. The Master shall also give public notice of the time when and the place where he will be prepared to make such payment by publication at least once a week for two successive weeks in a newspaper published in each of the following cities—namely, New York and Omaha—and no holder of any claim to bonds or coupons of the payment of which notice shall have been so given, who shall fail to present the same for payment at the time and place specified shall be entitled to the payment of any interest thereon after that date out of the proceeds of the said sale or the additional sum furnished to the Master by the purchaser as aforesaid.

The Master shall pay, stamp paid and cancel the First Mortgage bonds presented to him for payment after such notice on or before the date of payment named therein and shall thereupon deposit in the registry of this Court the portion of the purchase price of said mortgaged premises which is applicable to the payment of those bonds which have not been presented to him, either in payment of the bid or for payment in cash, together with one per cent. of such amount for clerk's fees which shall be paid to him by the purchaser, his successors or assigns, as a part of the costs herein.

The Master shall report what bonds have not been presented to him for cancellation and the amount of the said deposit applicable to the payment thereof, and the Clerk of the Court shall, there-
5910 after, on the customary order of the Court, pay, stamp paid and cancel any of such unpresented bonds which are presented to him for payment.

29. *Questions reserved. It is further Ordered, Adjudged and Decreed*, that all questions not hereby disposed of, including the discharge of the Receivers and the statement and settlement of their accounts, are hereby reserved by this Court for its future adjudication, and that any party to this cause may at any time apply to this Court for further relief at the foot of this Decree in respect to matters not herein specifically provided for.

WALTER H. SANBORN,
U. S. Circuit Judge, Eighth Circuit.

Mr. LOVETT. It is further stipulated (subject to correction) that in the foreclosure proceeding last above mentioned, ancillary bills were afterward filed in the Circuit Court of the United States for the Southern District of Iowa, The District of Colorado, The District of Wyoming, and the District of Utah, and that ancillary decrees of foreclosure, in substantially the form of Defendants' Exhibit 13, were rendered in such ancillary proceedings on the 29th and 30th days of July, 1897.

It is further stipulated that, pursuant to the decree of foreclosure, Defendants' Exhibit 13, the property covered thereby was sold on the

2nd day of November, 1897, to Louis Fitzgerald and Alvin W. Krech, as Trustees, for $50,637,435; that such sale was duly reported to the court by the Special Master making the sale.

5911 Mr. LOVETT. I now offer in evidence Defendants' Exhibit 14, being copy of the decree of the court in such foreclosure proceedings.

It is stipulated that the copy offered may be used in place and stead of the original, subject to correction.

Defendants' Exhibit 14 is as follows:

DEFENDANTS' EXHIBIT 14.

DEXTER.

ORDER CONFIRMING SALE.

IN THE CIRCUIT COURTS OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH, AND THE SOUTHERN DISTRICT OF IOWA.

(Title of cause omitted.)

Upon motion of Louis Fitzgerald and Alvin W. Krech, as purchasing trustees, appearing by Winslow S. Pierce, their solicitor, and upon the annexed stipulation and consents, and the Court being fully advised in the premises, it is

Ordered, that the Special Master's report of sale filed herein on November (a), 1897, be and it is in all things ratified, approved and confirmed, and the sale therein reported is hereby made absolute, subject however to all the terms and conditions of the decree of foreclosure entered herein and to the due performance by the purchasers, or their successors or assigns, of all the obligations therein prescribed.

WALTER H. SANBORN,
Circuit Judge.

Dated November 8, 1897.

Filed and entered in:

Circuit Court United States for District of Nebraska, No-
5912 vember 9, 1897.

Circuit Court United States for District of Colorado, November 11, 1897.

Circuit Court United States for District of Wyoming, November 10, 1897.

Circuit Court United States for District of Utah, November 11, 1897.

Circuit Court United States for Southern District of Iowa, November 9, 1897.

NOTE (a).—In Nebraska and Iowa order the date is November 2nd. In Colorado order the date is November 3rd. In Wyoming order the date is November 3rd. In Utah order the date is November 4th.

5913 Mr. LOVETT. I now offer in evidence, as Defendants' Exhibit 15, copy of the assignment by Louis Fitzgerald and Alvin W. Krech of their bid to the Union Pacific Railroad Company.

It is stipulated that the copy offered may be used in place and stead of the original, subject to correction.

Defendants' Exhibit 15 is as follows:

DEFENDANTS' EXHIBIT 15.

ASSIGNMENT OF BID.

Know all Men by these Presents, That

Whereas, in a certain cause pending in the Circuit Court of the United States for the District of Nebraska, in which F. Gordon Dexter and Oliver Ames, Second, Trustees, are complainants, and The Union Pacific Railway Company and others, are defendants, a certain decree of foreclosure and sale was entered by the said Court on the 29th day of July, 1897; and

Whereas, in certain causes ancillary thereto and pending in the Circuit Courts of the United States for the Districts of Colorado, Wyoming, Utah, and the Southern District of Iowa, in which causes said F. Gordon Dexter and Oliver Ames, Trustees, are complainants, and said The Union Pacific Railway Company and others are defendants, certain decrees were entered by said Courts on the following dates respectively, to wit:—in the Circuit Court of the United States, for the Southern District of Iowa on the 29th day of July, 1897; in the Circuit Court of the United States, for the District of Colorado, on the 31st day of July, 1897; in the Circuit Court of the United States, for the District of Wyoming on the 31st day of July, 1897, and in the Circuit Court of the United States for the District of Utah, on the 2d of August, 1897, by each of which said

5914 decrees, it was, among other things, adjudged and decreed that the decree rendered in said cause by the United States Circuit Court for the District of Nebraska be rendered and pronounced as the decree of the said Courts respectively in said ancillary causes and should be executed upon the terms and conditions therein prescribed, and that the execution of said decree rendered by said Circuit Court of the United States for the District of Nebraska, according to its terms and conditions, should be deemed and held to be the execution of the decrees of the said Courts in said ancillary causes in all respects whatsoever; and

Whereas, by said decrees it was, among other things, adjudged and decreed that the said The Union Pacific Railway Company pay or cause to be paid within twenty days after the entry of said decrees to the complainants in said causes for the use and benefit of the holders of the First Mortgage bonds of The Union Pacific Railroad Company issued under and secured by the First Mortgage of said Company dated November 1st, 1865, the amount in said decrees found to be due for principal and interest on said First Mortgage bonds, and that in default of such payment within said time all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances

to the same belonging, rolling stock and property of every kind and description embraced in and covered by said First Mortgage should be sold as in said decrees directed as an entirety and in one parcel by William D. Cornish, the Special Master appointed by said decrees, at public auction to the highest bidder or bidders upon the mortgaged premises, at the freight station of The Union Pacific Railway Company in the City of Omaha, in the State of Nebraska, on a day or days to be fixed by the said Special Master, after giving notice of
5915 said sale, as in said decrees specified; and

Whereas, neither the said The Union Pacific Railway Company, nor any one claiming under it, nor any one for its account, nor any one of the defendants in said causes, paid or caused to be paid within the time directed in said decrees, or at any other time, the amount therein found to be due as aforesaid; and

Whereas, the said Special Master, in pursuance of said decrees, due notice having been given as therein prescribed and according to law, did duly sell at public auction upon the mortgaged premises at the freight station of The Union Pacific Railway Company in the City of Omaha, in the State of Nebraska, on the 2nd day of November, 1897, all and singular all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock and property of every kind and description embraced in and covered by said First Mortgage and in the said decrees described, to Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, for the sum of $50,637,435; the said Louis Fitzgerald and Alvin W. Krech being the highest and best bidders for said property at said sale and having duly and seasonably qualified as bidders at said sale, as required by said decrees in that behalf; and

Whereas, the said Special Master did duly make and file his Report of said sale in the said several Courts, which said report and the sale therein reported have been, upon due notice, by orders of the said several courts, duly confirmed; and

Whereas, the said Louis Fitzgerald and Alvin W. Krech have in all respects to the date of these presents complied with the provisions of the said decrees of foreclosure and sale and have made payment, or provision for the payment of the purchase price
5916 which has been approved by the Court; and

Whereas, in said decrees it is, among other things, provided that upon payment of the purchase price by the purchasers of said property, or upon making such provision for the payment thereof as the Court should approve, the said Special Master appointed by said decrees shall execute and deliver a good and sufficient deed conveying all the said railroad, telegraph, rolling stock and property of every kind and description in said decrees described and ordered to be sold to the purchasers or their successors or assigns; and

Whereas, the Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, is desirous of acquiring, and is authorized to acquire the said bid or contract of purchase of said Louis Fitzgerald and Alvin W. Krech,

and all their rights thereunder, including their right to receive a deed or deeds pursuant to the said decrees, for the property, railroad and premises purchased by the said Louis Fitzgerald and Alvin W. Krech at the said sale; and the said Railroad Company has made and has agreed to make payment and provision for the payment for said property satisfactory to said Louis Fitzgerald and Alvin W. Krech and has agreed to perform and assume all of the obligations required by said decrees and orders to be performed and assumed by said Louis Fitzgerald and Alvin W. Krech by reason of their said bid and purchase at said sale;

Now therefore these presents witness:

That the undersigned, Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, in consideration of the premises, and other good and valuable considerations, have sold, assigned, trans-
5917 ferred and set over and hereby do sell, assign, transfer and set over unto said Union Pacific Railroad Company, its successors and assigns, their said bid and their right to receive conveyance of the said railroad, franchises and property so purchased by them and all their other rights under said decrees or by virtue of their said bid and purchase in and to said premises, being all the railroad, telegraph, franchises, rights, functions, immunities, rolling stock and property of every kind and description embraced in and covered by the said First Mortgage.

To have and to hold the same unto the said Union Pacific Railroad Company, its successors and assigns, to its and their own use forever; subject, however, to all the conditions, restrictions and reservations in said decrees set forth, and subject, further, to the performance in the manner set forth in said decrees by the said Union Pacific Railroad Company, of all the acts and things required by said decrees to be performed by the said purchasers at said sale and now remaining unperformed, and said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, do hereby direct and request that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers at said sale, or his or their successors or assigns, conveying and releasing said property as in said decrees provided, be made and delivered to said Union Pacific Railroad Company, its successors and assigns.

And these presents further witness that:

Union Pacific Railroad Company hereby accepts the foregoing assignment and covenants and agrees to pay, satisfy and discharge, and to indemnify and forever hold harmless said Louis Fitzgerald and Alvin W. Krech, their executors and administrators, from
5918 and against any and all losses, damages, expenses and liabilities whatsoever which may have been incurred, or hereafter may be incurred, by said Louis Fitzgerald and Alvin W. Krech, or either of them, by reason of their said bid and the acceptance thereof or by reason of any acts and things required by said decrees or said orders confirming said sale to be performed by said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees.

Ten originals of this instrument have been executed, each of which shall be deemed an original and all collectively as one instrument.

In witness whereof, the undersigned, Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have hereunto set their hands and affixed their seals, and Union Pacific Railroad Company has caused these presents to be executed by its President and its corporate seal to be hereto affixed attested by its Secretary, this 17th day of January, 1898.

LOUIS FITZGERALD [SEAL]
ALVIN W. KRECH [SEAL]
Purchasing Trustees.

In the presence of:
G. V. TURNER.
WALTER S. WILSON.

UNION PACIFIC RAILROAD COMPANY,
[SEAL.] By HORACE G. BURT, *President.*
Attest:
ALEX. MILLAR,
Secretary.

5919 Mr. LOVETT. I now offer in evidence Defendants' Exhibit 16–A, being copy of deed from William D. Cornish, Special Master, and others, to the Union Pacific Railroad Company, dated January 22, 1898, made pursuant to the decree of foreclosure above set forth.

It is stipulated that the copy offered may be used in place and stead of the original, subject to correction.

Defendants' Exhibit 16–A is as follows:

DEFENDANTS' EXHIBIT 16–A.

WILLIAM D. CORNISH, Special Master,

and others,

to

UNION PACIFIC RAILROAD COMPANY.

DEED,

Under Decree Foreclosing First Mortgage of The Union Pacific Railroad Company.

Dated January 22, 1898.

Indenture, made the 22nd day of January, A. D. 1898, between William D. Cornish, of St. Paul, Minnesota, as Special Master appointed by the decrees entered in the causes hereinafter mentioned by the circuit courts of the United States for the District of Nebraska, the Southern District of Iowa, the District of Wyoming, the District of Colorado and the District of Utah—party of the first part:

Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers of the property of

The Union Pacific Railway Company, appointed by the said
5920 Circuit Courts of the United States in the causes hereinafter mentioned—parties of the second part;

F. Gordon Dexter and Oliver Ames, as Trustees under the mortgage or deed of trust hereinafter mentioned executed by The Union Pacific Railroad Company and bearing date the first day of November, 1865,—parties of the third part;

The Union Pacific Railway Company, a corporation formed by the consolidation of said The Union Pacific Railroad Company, with the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company,—party of the fourth part;

Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, both of the City of New York,—parties of the fifth part; and

Union Pacific Railroad Company, being a new corporation or body politic and corporate organized and existing under and pursuant to the laws of the State of Utah,—party of the sixth part;

Whereas, The Union Pacific Railroad Company, a corporation created under and by virtue of the Act of Congress approved July 1, 1862, and the Act of Congress approved July 2, 1864, on or about the 1st day of November, 1865, executed a mortgage or deed of trust (herein called its "First Mortgage") bearing date the first day of November, 1865, whereby it conveyed to Edwin D. Morgan and Oakes Ames, as trustees, and to their successors, all and singular the railroad, telegraph, property and franchises in said mortgage described (the same being embraced in the railroad, property and franchises hereinafter described and conveyed), and on or about the 12th day of March, 1868, executed a supplemental indenture to said trustees, which First Mortgage and supplemental indenture were
5921 executed to said trustees to secure certain bonds, of said The Union Pacific Railroad Company (herein called its "First Mortgage Bonds"), of which there were issued and outstanding on the 29th day of July, 1897, bonds to the aggregate amount of $27,229,000 principal; and

Whereas, F. Gordon Dexter and Oliver Ames, the parties of the third part to this indenture, were duly appointed substituted trustees under the said First Mortgage, and at the time of filing their bill of complaint hereinafter mentioned, were, and now are, the sole substituted trustees under said First Mortgage; and

Whereas, on or about the 24th day of January, 1880, said The Union Pacific Railroad Company, under and pursuant to Acts of Congress in that behalf, was consolidated with the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, and by such consolidation said The Union Pacific Railway Company, party of the fourth part hereto, was formed and became the successor to said The Union Pacific Railroad Company, which executed the First Mortgage aforesaid; and

Whereas, said The Union Pacific Railway Company having become insolvent and having made default in the payment of certain interest which became due on the first day of July, 1894, and the

first day of January, 1895, on the First Mortgage Bonds secured by said First Mortgage, the said F. Gordon Dexter and Oliver Ames, trustees as aforesaid, filed in the Circuit Court of the United States for the District of Nebraska, their bill in equity against The Union Pacific Railway Company, the United States of America and various other defendants, to foreclose the said First Mortgage, and subsequently filed in said cause their supplemental bill of complaint
5922 showing that the said Railway Company had made default in the payment of interest which fell due and matured on said First Mortgage Bonds on the first day of July, 1895, on the first day of January, 1896, on the first day of July, 1896, on the first day of January, 1897, and on the first day of July, 1897, and that the said company had also made default in the payment of the principal of certain of the bonds secured by said First Mortgage; and such proceedings were thereupon had in the said cause that, on the 29th day of July, 1897, a certain decree of foreclosure and sale was entered by said Circuit Court of the United States for the District of Nebraska, wherein and whereby it was adjudged and decreed that said The Union Pacific Railway Company pay, or cause to be paid within twenty days after the entry of said decree, certain amounts therein found to be due under the said First Mortgage, and that in default of such payment by said The Union Pacific Railway Company, or by some one claiming under it or by some one for its account, or by some of the defendants in the said cause within the time aforesaid, the said mortgaged premises, property and franchises should be sold as provided in the said decree; and

Whereas similar and ancillary causes were pending between the same parties in the Circuit Courts of the United States for the Southern District of Iowa, the District of Wyoming, the District of Colorado, and the District of Utah, in each of which Districts portions of the mortgaged premises, property and franchises were situate; and said decree entered by the Circuit Court of the United States for the District of Nebraska on the 29th day of July, 1897, was adopted, rendered and announced as the decree of each of said other
5923 courts in said similar and auxiliary causes therein pending, by decrees entered by such courts respectively on the following dates, viz: by said Circuit Court of the United States for the Southern District of Iowa, on the 29th day of July, 1897, by said Circuit Court of the United States for the District of Wyoming, and said Circuit Court of the United States for the District of Colorado, on the 31st day of July, 1897, and by said Circuit Court of the United States for the District of Utah, on the 2d day of August, 1897—to which said several suits and to the proceedings and record thereof in each of the said Courts, including said Circuit Court of the United States for the District of Nebraska, reference is hereby made; and

Whereas neither the Union Pacific Railway Company nor any one claiming under it nor any one for its account, nor any of the defendants in either of the said causes above mentioned within the time

fixed in each of the said decrees, or at any other time made payment of the sums decreed as aforesaid, or any part thereof; and

Whereas, by the decree and order of the Circuit Court of the United States for the District of Nebraska in said cause therein pending Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, the parties hereto of the second part, were appointed receivers of the railroad, property and effects of The Union Pacific Railway Company, party of the fourth part hereto; and in and by decrees entered by said United States Circuit Courts for the Southern District of Iowa and the Districts of Wyoming, Colorado and Utah, respectively, in said ancillary causes therein pending the said parties of the second part hereto were ap-
5924 pointed receivers of the railroad, property and effects of said The Union Pacific Railway Company for and within the territory and jurisdiction of said courts respectively with the powers, responsibilities and duties conferred upon them by said decree and order entered by said Circuit Court of the United States for the District of Nebraska appointing such receivers; and

Whereas, William D. Cornish, the party of the first part hereto, was, in and by the said decree of the Circuit Court of the United States for the District of Nebraska, and in and by said ancillary decrees of the United States Circuit Court in and for each of the said other districts, appointed Special Master to execute said decrees and make the sale therein provided to be made, and to execute and deliver deeds of conveyance to the purchaser or purchasers thereof upon confirmation of such sale and payment of the purchase price thereof as in said decrees provided; and

Whereas, said William D. Cornish, Special Master as aforesaid, gave due public notice, in pursuance of said decrees and according to law, of the time and place of the sale under said decrees and of the manner and terms upon which such sale was to be conducted, and duly complied with all the provisions of said decrees relating to such sale; and in pursuance of said decrees, at the place specified therein, to wit, upon the mortgaged premises, at the freight station of The Union Pacific Railway Company, in the city of Omaha, in the State of Nebraska, did on the 2d day of November, 1897, duly sell at public auction to Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, the parties of the fifth part to this indenture, they
5925 being the highest and best bidders at said sale, all and singular the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock and property of every kind and description, in the said decrees mentioned and directed to be sold, at and for the sum of fifty million, six hundred and thirty-seven thousand, four hundred and thirty-five dollars ($50,637,435); and

Whereas, afterwards, William D. Cornish, Special Master as aforesaid, did duly make and file his report of said sale to the said several courts, and by decrees entered by said several Circuit Courts of the United States in said causes therein pending respectively, the said

report of sale was in all things ratified, approved and confirmed and the sales therein reported made absolute, subject to all the terms and conditions of said several decrees of foreclosure and sale and to the due performance by the purchasers or their successors or assigns of all the obligations therein prescribed; and

Whereas, said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, the parties of the fifth part hereto, have in all respects complied with the provisions of the said decrees of foreclosure and sale and have paid and made settlement of the purchase price as provided in said decrees and the orders of said Courts; and

Whereas, Said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have duly sold, assigned, transferred and set over to Union Pacific Railroad Company, the party of the sixth part to this Indenture, their said bid and their right to receive conveyance of
5926 the railroad, franchises and other property purchased and all their other rights under the said decrees and by virtue of their bid and purchase at said sale;

Now, therefore, this Indenture witnesseth, that the said William D. Cornish, Special Master as aforesaid, party of the first part to these Presents, in order to carry into effect the sale made by him as aforesaid, and in pursuance of the aforesaid decrees, and in conformity to law, and in consideration of the premises, and of the payment and settlement as aforesaid of the said purchase price of the said property as provided in that behalf in the said decrees, and orders of said courts, has granted, bargained, sold, assigned, released, conveyed and confirmed, and by these presents, does grant, bargain, sell, assign, release, convey and confirm unto the said Union Pacific Railroad Company, the party of the sixth part hereto, and to its successors and assigns, in fee simple forever, all and singular all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock and property of every kind and description mentioned in the said decrees and embraced in and covered by the said First Mortgage of November 1, 1865, and all the property sold or directed by the said decrees to be sold, the same being described as follows:

All the railroad, right of way, and railroad property of The Union Pacific Railway Company extending from the eastern terminus of the Union Pacific Railway on the east line of said railway company's property between Twelfth avenue and Thirteenth avenue in Council Bluffs, Iowa, in a westerly direction to Twentieth street in Omaha, Nebraska, including the railroad and railroad bridge across the
5927 Missouri River, and extending from the initial point of construction of the Union Pacific Railroad near the northeast corner of and within section 10, township 15, range 13 east of the 6th principal meridian in Omaha, Nebraska, in a southerly and westerly direction through the city of Omaha to Twentieth street in said city of Omaha, at a junction with that part of said railroad from Council Bluffs aforesaid, and extending thence in a westerly direction through the counties of Douglas, Sarpy, Dodge, Colfax, Platte, Merrick, Hall,

Buffalo, Dawson, Lincoln, Keith, Deuel, Cheyenne, and Kimball, in the State of Nebraska, and Sedgwick County, in the State of Colorado, and the counties of Laramie, Albany, Carbon, Sweetwater, and Uintah, in the State of Wyoming, and the counties of Summit, Morgan, Davis, and Weber, in the State of Utah, to a junction with the Central Pacific Railroad at a point 5 miles west of Ogden in the State of Utah, a distance of 1,042.41 miles of main line railroad; and also the rights of way, railroads, and railroad tracks constituting spurs or branch lines of railroad extending from points of junction with the said main lines, (1) at a point about .6 of a mile west of what is known as Transfer Depot at Council Bluffs, in a northeasterly direction to what is known as the Broadway Depot in said city, a distance of 1.72 miles in the city of Council Bluffs; (2) at Alma Junction, Wyoming, in a northerly direction to a terminus at Mine No. Seven, a distance of 3.88 miles; (3) at Cheyenne, Wyoming, in a northwesterly direction to a connection with the track of the Union Pacific, Denver and Gulf Railway, a distance of 2.04 miles; (4) at a point on said main line in Omaha, Nebraska, northerly and easterly, a distance of 18,000 feet to certain ice houses and industries
5928 on what is known as Cut-off Lake; also lots, yards, terminal grounds, shop grounds, streets and alleys, lands and tracts of land, tenements and hereditaments, easements and rights of way, owned or acquired or appropriated by or for The Union Pacific Railroad Company, The Union Pacific Railway Company, or The Receivers of the property of said last named company for the purposes of said lines of railroad, including all lands so acquired or appropriated the title to which stands in the names of trustees for said The Union Pacific Railway Company; and also all lands acquired for or used for stations or for terminal purposes, and also all rights and estates, legal and equitable, of The Union Pacific Railway Company in and to all stations and depots, and in and to all union depots upon or connected with the line of its said railway or used in connection therewith, and including all the lands and other property described in the reports of the Special Master, filed in said several causes, respectively, and referred to in said decrees, and in the schedules in said reports contained and therein numbered 1, 2, 3, 4, and 5, hereby referred to and made part hereof, all the said property being property owned, acquired, or appropriated, and necessary to the use and operation of the said railroad; also the shops, freight depots, general office building, round houses, depots, engine houses, car houses, station houses, machine shops, work-shops, rails, switches, turnouts, spurs, sidetracks, sidings, and other structures and facilities upon said mortgaged premises, constructed, acquired, or owned for the purposes of or in connection with said lines of railway; also the lands, interest and easements in lands, pipes, pump houses, structures, pipe lines, appliances, facilities, and easements of said company pertaining to
5929 the water supply upon or along said lines of railroad, and the tools, appliances, fixtures, materials, and supplies owned or acquired for the purposes thereof; also the locomotives, passenger

cars, Pullman sleeping cars, dining cars, freight cars, and other cars, and all other equipment and rolling stock owned by The Union Pacific Railway Company, and all interest of said The Union Pacific Railway Company in any other equipment or rolling stock, to the extent that said equipment and rolling stock so owned, or in which the said railway company has any interest, was acquired or provided for or by said railway company for the purposes of said railroad and mortgaged premises, or is necessary for the running and operation thereof, the same being the undivided 70 per cent of all the rolling stock or equipment owned by The Union Pacific Railway Company, or in which said company has any interest; also all the lines of telegraph, telegraph material, instruments, fixtures, and appliances belonging to the said railway company and located upon or used in connection with said mortgaged premises; also all furniture, fixtures, appliances, apparatus, supplies, and material owned, acquired, or provided by said company for use in connection with said railroad and mortgaged premises, located in the various offices of said railway company upon or remote from said railroad, including the offices of said company in the cities of Omaha, Nebraska, and Boston, Massachusetts, and also all the property of said The Union Pacific Railway Company, and all its rights and interests in and to property of every kind and nature, whether of the character herein described or otherwise, and also all the corporate rights and franchises of said The Union Pacific Railroad Company and its
5930 successor The Union Pacific Railway Company, so far as such property, rights, interests, and franchises pertain to the said railroad, telegraph, and mortgaged premises; also all the moneys, credits, and property not herein otherwise specified, in the possession of or under the control of the said Receivers in said causes, or to which said Receivers are or may be entitled, which have been or may be derived by said Receivers from or on account of said mortgaged premises, or from the sale or other disposition of any of said mortgaged property, or from the operation of said mortgaged premises by said Receivers, subject to the charges of the Receivers as specified in said decrees in respect thereof; said lands above referred to as standing in the names of trustees for the said The Union Pacific Railway Company and which are herein and hereby conveyed unto the party of the sixth part hereto, being described as follows:

DESCRIPTION.

POTTAWATTAMIE COUNTY, IOWA.

	Acres.
Commencing at a point 471.5 ft. south of the northeast corner of the NW ¼ of SE ¼ of Sec. 34, T 75 N. R. 44 W. of the 5th P. M.; thence (taking the 40 acre line for due north and south line) S 57 deg. 31' W. 369.23 ft; thence west to a point 676.5 ft. south and 329.34 ft. east of the centre of said Sec. 34; thence south parallel with the north & south centre line of said Sec. 34, 660 ft. to a point in the present North Right of Way line of the Union Pacific Ry. Co.; thence east on said R. O. W. line 913.16 ft.; thence northeasterly 89 ft. to a point in 40 acre
5931 line 60 ft. more or less north of the SE corner of the NW ¼ of SE ¼ of said Sec. 34; thence North on said 40 acre line 795.3 feet to the place of beginning, containing an area of	15.42

Atkins, Baker & McFarland, Trustees.

Acres.

A tract in the NE ¼ of SE ¼ of Sec. 34, T. 75 N. R. 44 W. of the 5th P. M. of Iowa, described as follows: Commencing at a point 185.3 ft. South from the East quarter section corner of said Sec. 34, running thence south on Section line 389.2 ft. or to grounds as now owned by the Union Pac. Railway Co.; thence Southwesterly on Northerly line of said grounds 1,484 feet to West line of said NE ¼ of SE ¼; thence North on said line 1,080 ft.; thence East 1,323 feet or to place of beginning. Except tract sold to S. H. Finney, described as follows: Commencing at a point 537 feet south from the East ¼ Section corner of said Sec. 34 and running thence south 39½ ft. to Union Pacific Ry. grounds; thence southwesterly on northerly line of said grounds 270¾ feet; thence N. 30 deg. W. 188⅔ ft.; thence East 335 ft. to place of beginning, Containing 0.737 of an acre 21.56

Atkins, Baker & McFarland, Trustees.

SW ¼ of NE ¼ and NW ¼ of Sec. 2 and all Sec. 3, all in Township 74, Range 44 West 791.10

5932 Dexter, Atkins & Mink, Trustees.

A tract of land in the NE. ¼ of SE. ¼ Sec. 34, T. 75 N., R. 44 W. in Pottawattamie Co., Iowa, described as follows:

Commencing at a point 537 ft. south from the East ¼ Section corner of said section 34, and running thence south 39½ feet to the U. P. Ry. ground; thence southwesterly on northerly line of said grounds 270¾ feet; thence north 30 deg. West 188⅔ ft.; thence East 335 feet to place of beginning, containing an area of 0.74

Dexter, Atkins & Mink, Trustees.

The East 44 feet of Lot 1; The East 44 feet and the west 22 feet of Lot 2, and all of lots 3 and 5, all in Block 9 in Grimes Addition to Council Bluffs 0.66

Dexter, Atkins & Mink, Trustees.

Part of Lots 4 and 6 in Block 9 in Grimes Addition to Council Bluffs not in Union Avenue 0.44

Dexter, Atkins & Mink, Trustees.

That portion of Lot 7 in Block 9 in Grimes Addition to the City of Council Bluffs, not taken and used for the Right of Way of Union Avenue 0.02

Atkins, Baker & McFarland, Trustees.

5933 Part of Lots 1, 2, 3, 4 & 5 in Block 13, in Bayliss Addition to Council Bluffs not in Union Avenue 0.57

Dexter, Atkins & Mink, Trustees.

An undivided half of Lots 1, 2 & 3 in Block 11 in the Sub-division of Riddle Tract in the City of Council Bluffs
All the interest of J. S. Casement, Mary Lockwood Casement, Robert L. Casement, Grey Casement and Daniel Wells Casement in and to Lots 1, 2 & 3 in Block 11 in Riddle's Sub-division of the City of Council Bluffs, Iowa 0.36

Atkins, Baker & McFarland, Trustees.

All the North 35⅓ feet of Lot 14 and all of Lots 15 & 16 in Block 11; all in the Sub-division of the Riddle Tract, City of Council Bluffs 0.32

Atkins, Baker & McFarland, Trustees.

All of Lot 17 in Block 11 in Sub-division of the Riddle Tract, City of Council Bluffs 0.12

Atkins, Baker & McFarland, Trustees.

All of Lot No. 18 in Block 11 in Sub-division of Riddle Tract, City of Council Bluffs 0.12

Atkins, Baker & McFarland, Trustees.

All of Lot 19 in Block 11 in the Sub-division of the Riddle Tract in the City of Council Bluffs 0.12

Atkins, Baker & McFarland, Trustees.

All of Lot 20 in Block 11 in the Sub-division of the Riddle Tract in the City of Council Bluffs 0.12

Atkins, Baker & McFarland, Trustees.

		Acres.
5934	All of Lots 1, 2, 9 & 10 in Block 12; also the north 22⅔ ft. of Lot 3 in Block 12 and the North 22⅔ ft. of Lot 11 in Block 12 and the North 113⅓ ft. of Lot 8 in Blk. 12; all in the Sub-division of the Riddle Tract of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.70
	All of Lot 1 in Block 33 in the Sub-division of the Riddle Tract in the City of Council Bluffs All of Lot No. 2 in Block No. 33, in Sub-division of the Riddle Tract, City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.25
	All Lot 3 in Block 33 in Sub-division of the Riddle Tract, City of Council Bluffs All of Lot 12 in Block 33, Riddle's Sub-division of the City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.25
	All of Lots 13 & 14 in Block 33 in Sub-division of Riddle Tract, City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.25
	All of Lot 15, Block 33 in the Sub-division of Riddle Tract, City of Council Bluffs All Lot 16 in Block 33 in the Sub-division of the Riddle Tract in the City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.20
	All of Lot 1 in Block 34 in Sub-division of the Riddle Tract, City of Council Bluffs 5935 Lot 2 and 3 in Block 34 in the Sub-division of the Riddle Tract, in the City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.37
	All of Lots 12, 13 & 14 in Block 34 in Sub-division of Riddle Tract, City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.38
	Lot 15 in Block 34 in the Subdivision of the Riddle Tract in the City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.10
	All Lot 16 in Block 34 in the Sub-division of the Riddle Tract in the City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.10
	All of Lot 14 in the Block 37 in Sub-division of the Riddle Tract, City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.13
	All of Lots 1, 2 & 3 in Block 38 in Sub-division of the Riddle Tract, City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.37
	All Lot 11 in Block 38 in Sub-division of the Riddle Tract in the City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.12
	All Lots 12, 13 & 14 in Block 38 in the Sub-division of the Riddle Tract in the City of Council Bluffs Atkins, Baker & McFarland, Trustees.	0.37
	All of Lot 15 in Block 38 in Sub-division of the Riddle Tract, City of Council Bluffs 5936 All of Lot 16 in Block 38 in Sub-division of the Riddle Tract in the City of Council Bluffs Dexter, Atkins & Lane, Trustees.	0.18

DOUGLAS COUNTY, NEBRASKA.

City of Omaha.

	Lots 2 and 3 in Block 208 in the City of Omaha, as surveyed and lithographed Atkins, Baker & McFarland, Trustees.	0.40
	Lot 4 in Block 208 in the City of Omaha, as surveyed and platted Atkins, Baker & McFarland, Trustees.	0.20

	Acres.
Lot 5 in Block 208 in the City of Omaha, as surveyed and platted Atkins, Baker & McFarland, Trustees.	0.20
Lot 6 in Block 208 in the City of Omaha Atkins, Baker & McFarland, Trustees.	0.20
Lot 2 in Block 215 in the City of Omaha Atkins, Baker & McFarland, Trustees.	0.20
Lot 3 in Block 215 in the City of Omaha Atkins, Baker & McFarland, Trustees.	0.20
Lot 4 in Block No. 215 in the City of Omaha, as surveyed and platted Atkins, Baker & McFarland, Trustees.	0.20
Part of Lot 2 (being 2,178 sq. ft.) in Block No. 226, in the City of Omaha, according to the recorded plat thereof. Atkins, Dexter & Lane, Trustees.	
5937 Commencing at a point 346 feet north of the SE corner of the SW ¼ of the SW ¼ of Section 23 in T 15 N of R 13 E of the 6th P. M.; thence east 410 feet; thence south 88 ft.; thence west 240 ft.; thence north 56 ft.; thence west 170 feet; thence north 32 feet to the place of beginning. Containing 26,560 square feet Atkins, Baker & McFarland, Trustees.	0.61
Lots 5, 6 & 7 in Block F Dexter, Atkins & Mink, Trustees.	0.60
Lot 1 in Block 178 in the City of Omaha, as surveyed and lithographed Atkins, Baker & McFarland, Trustees.	0.20
All Lots numbers 2 and 3 in Block No. 178 in the City of Omaha Atkins, Baker & McFarland, Trustees.	0.40
All the folllowing described Real Estate, situated in the City of Omaha, County of Douglas, and State of Nebraska, to wit: Lots 5, 6, 7 & 8 in Block 178; Lots 6, 7, & 8 in Block 179 Atkins, Baker & McFarland, Trustees.	1.22
Lot 5 in Block 179 as surveyed and platted by the Council Bluffs and Nebraska Ferry Co Dexter, Atkins & Lane, Trustees.	0.20
Lot No. 5 in Block 180 in the City of Omaha Atkins, Baker & McFarland, Trustees.	0.20
Lot No. 6 and 8 in Block 180 in the City of Omaha 5938 Atkins, Baker & McFarland, Trustees.	0.40
Lot 4 in Block 181 Dexter, Atkins & Mink, Trustees.	0.20
All Lots 1 & 4 in Block 188 in the City of Omaha. Also a parcel of land adjoining said Lot 1 on the east, commencing at the NE corner of said Lot 1 in Block 188 aforesaid; thence south 132 feet to the SE corner of said Lot 1; thence east 20 feet; thence north 133 ft.; thence west 20 ft. to place of beginning. Containing 2640 square feet Atkins, Baker & McFarland, Trustees.	0.46
All Lots 2 and 3 in Block 188 in the City of Omaha Atkins, Baker & McFarland, Trustees.	0.40
All of Lots 1, 2 & 3 Block 189 south of Right of Way of the U. P. Ry. containing 1⅗ of a regular city lot Atkins, Baker & McFarland, Trustees.	0.32
All that portion of Lot 4 in Block 189 in the City of Omaha not included in a certain grant for Right of Way made to the Union Pacific Railroad Company by deed dated March 3, 1864, and recorded on the 21st day of the same month in Book "P" of Deeds at Page 301 of the records of said Douglas County Atkins, Baker & McFarland, Trustees.	0.02
Part of Lot 2 (being 6,534 sq. ft.) in Block 226 in the City of 5939 Omaha, according to the Recorded Plat thereof.	
Lots 7, 8, 9 & 10 in Block 15 and Fractional Block 17 in the Town of Millard Dexter, Atkins & Mink, Trustees.	0.33
Lots 7, 8, 9 & 10 in Block 23 in the Town of Waterloo Dexter, Atkins & Mink, Trustees.	0.75

DODGE COUNTY, NEBRASKA.

	Acres.
Lots 1 & 2 in Block C in the City of North Bend Lot 5 in Block 53 in the City of North Bend, except the East 15 feet of lot	1.42

Dexter, Atkins & Mink, Trustees.

PLATTE COUNTY, NEBRASKA.

City of Columbus.

				Trustees.
Lot 3 & 4 in Block	41	0.40	Dexter, Atkins & Mink	
" 7 "	58	0.20	" " "	
" 3 & 4 "	59	0.40	" " "	
" 4 "	77	0.20	" " "	
Lot 3 "	80	0.20	" " "	
" 1 & 2 "	86	0.40	" " "	
" 8 "	100	0.20	" " "	
" 5 & 6 "	101	0.40	" " "	
" 7 "	102	0.20	" " "	
" 3 & 4 "	110	0.40	" " "	
" 5 "	112	0.20	" " "	
" 2 & 7 "	113	0.40	" " "	
" 7 & 8 "	121	0.40	" " "	
Lot 7 "	125	0.20	" " "	
5940 " 6 "	145	0.20	" " "	
" 7 "	159	0.20	" " "	
Lot 8 "	168	0.20	" " "	
" 5 "	187	0.20	" " "	
" 3 & 4 "	190	0.40	" " "	
" 7 "	195	0.20	" " "	
" 1 "	199	0.20	" " "	
" 1 "	209	0.20	" " "	
" 6 "	211	0.20	" " "	
" 7 "	224	0.20	" " "	
" 1 & 7 "	225	0.40	" " "	
" 2 "	229	0.20	" " "	
" 6 "	231	0.20	" " "	
" 3, 5 & 6 "	232	0.60	" " "	
" 2 "	234	0.20	" " "	
" 2 "	259	0.20	" " "	
Out Lot 7		11.65	" " "	
9		7.75	" " "	
SE ¼ of NW ¼ Sec. 20–17–1 W		40.00	" " "	

HALL COUNTY, NEBRASKA.

City of Grand Island.

			Trustees.
Lots 5, 6, 7, & 8 in Block	39	0.80	Dexter, Atkins & Mink
" 5, 6, 7 & 8 "	40	0.80	" " "
" 5, 6, 7 & 8 "	41	0.80	" " "
" 3, 4, 5 & 6 "	42	0.80	" " "
First Addition to Grand Island.			
Frac. Lot 7 in Block	105	0.03	" " "

5941 BUFFALO COUNTY, NEBRASKA.

Kearney Junction.

			Trustees.
Lots	89, 602, 719	0.40	Dexter, Atkins & Mink
(Park) "	1398, 1399, 1400, 1404, 1405, 1406	0.90	" " "
"	1477	0.15	" " "

LARAMIE COUNTY, WYOMING.

City of Cheyenne.

Fractional Lot No. 1 in Block 833. Also Lots 1, 2 & 3 and frac. Lots 4, 5, 6, 7 & 8 in Block 834. Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 835. All in Section 32, T. 14, N. R., 66 W.; Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 386; Also Lots No. 1, 2, 3, 4, 5, 6, 7 & 8 in Block 837; Also Lots No. 1, 2, 3, 4, 5, 6, 7 & 8 in Block 838; Also Lots No. 1, 2, 3, 4, 5, 6, 7 & 8 in Block 839—All in Section 32, T. 24, N. R., 66 W., as designated on the official plat of Townsite of said City of Cheyenne... 9.86

Atkins, Baker & McFarland, Trustees.

Lot 22 in Block 122. City of Laramie..... 0.72

Dexter, Atkins & Mink, Trustees.

SODA LAKES, NEAR LARAMIE, WYOMING.

SW ¼ of NW ¼ of NE ¼
NW ¼ of SW ¼ of NE ¼
E ½ of NW ¼
S ½ of NW ¼ of NW ¼ } Sec. 4, T. 14, N. R. 75, W.
NE ¼ of SW ¼ of NW ¼

5942 N ½ of NW ¼ of SW ¼.....Sec. 5, T. 14, N. R. 75, W.
NE ¼ of NE ¼ of SE ¼.....Sec. 6, T. 14, N. R. 75, W.
SE ¼ of SE ¼ of SW ¼.....Sec. 33, T. 15, N. R. 75, W.
Also all claim in and to other portions of Secs. 4 & 5, T. 14, N. R. 75 W., and in and to other portion of Sec. 33 T. 15 N. R. 75, which may have been at any time vested in those through whom above property was obtained..... 200.00

Dexter, Atkins & Mink, Trustees.

WEBER COUNTY, UTAH.

A part of lot 6 in Block 4 in South Ogden Survey, beginning at the northwest corner of said lot 6 and running thence south 20 rods; thence east 10 rods; thence north 2½ rods; thence east 2 rods; thence north 17½ rods; thence west 12 rods to place of beginning..... 1.47

Atkins, Dexter & Lane, Trustees.

Including also in this conveyance to said party of the sixth part any property and income acquired or received by the Receivers as Receivers in said several causes or any of them through the operation of said mortgaged premises, and any property acquired by the Receivers in the Ames Cause hereinafter mentioned for or appropriated by them to the use of the railroad and telegraph covered by said First Mortgage or necessary to the said railroad and telegraph line for running and operating the same, together with all the franchises, rights, functions, immunities and appurtenances belonging to said mortgaged premises.

It being the true intent and purpose hereof to convey to the
5943 party of the sixth part all property and premises directed by the said decrees to be sold whether the same are in this Indenture particularly described or not, subject however to the charges of the Receivers in respect thereof as set forth in said decrees:

To have and to hold all and singular the above-mentioned and described railroad, telegraph, rolling stock, franchises, and property of every kind and description hereby conveyed, or intended to be

conveyed, unto the said Union Pacific Railroad Company, party of the sixth part hereto, being the corporation organized and existing under and pursuant to the laws of the State of Utah, and to its successors and assigns forever, as fully and absolutely as the party of the first part may or ought by virtue of the said decrees to convey the same; subject to and saving, however, the right of the Government to have the preference at all times in the use, at fair and reasonable rates of compensation, to be paid to the party of the sixth part, not to exceed the amounts paid by private parties for the same kind of service, of said telegraph line and railroad, for the transmission of despatches over said telegraph line, and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the Government, whenever required by any Department thereof:

And subject to and saving the title of The American Loan and Trust Company, as shown by the Equipment Trust Indenture of The Union Pacific Railway Company to the said The American Loan and Trust Company, dated October 1st, 1887, to the extent and so far as the said indenture affects the portion of the equipment therein embraced which is adjudged in said decrees to pertain to said mortgaged premises, and to the extent of the purchase money
5944 indebtedness in said decrees found to be outstanding thereunder: *and subject to and saving* the lien of the Omaha Bridge Mortgage of the Union Pacific Railroad Company to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as trustees, dated the first day of April, 1871, and the indenture supplemental thereto, dated the 27th day of September, 1871, and the lien of the Omaha Bridge Renewal Mortgage, executed by The Union Pacific Railway Company to the Central Trust Company, of New York, as trustee, dated the first day of October, 1885, upon and in respect of the premises embraced in and covered by said Bridge Mortgages, and to the extent of the indebtedness thereby secured and in said decrees found to be outstanding and unpaid:

And subject also to the further express condition that the party hereto of the sixth part, its successors or assigns, shall, as part consideration and purchase price of the property purchased and herein conveyed, and in addition to the sums required by said decrees to be paid, and paid, take the same, and receive this deed therefor upon the express condition that it or its successors or assigns shall, as provided in said decrees, pay, satisfy and discharge the obligations, liabilities and charges in said several decrees, specified as follows:

First. All the proper costs of said causes and of the expenses of the sale, therein decreed, including the compensation and necessary expenses of the Special Master appointed to make the sale.

Second. Any unpaid compensation which has been or shall be allowed to the Receivers in said causes or their solicitors, and any unpaid indebtedness and liability of the Receivers incurred in the

5945 management and operation of the mortgaged premises since October 13, 1893, which is either established or unquestioned at the time of the delivery of this Indenture.

Third. The charges, compensation, allowances and disbursements of the Complainants and any of the other parties to said causes, entitled thereto, their solicitor and counsel.

Fourth. A sum equivalent to interest at the rate of six per cent. per annum from the date of said decree, entered by the United States Circuit Court for the District of Nebraska, to a date of payment to be fixed by the Special Master upon the entire amount of First Mortgage bonds which has not been presented by the purchaser on account of his bid.

Fifth. The payment of all First Mortgage coupons and accrued interest on matured First Mortgage bonds unpaid at the date of the entry of said decrees, to the amount of $102,930, as found in article Eighth of said decrees, which shall not have been paid at the time of the delivery of the property to the purchaser.

Sixth. All unpaid indebtedness and obligations, if any such there be, which have been legally contracted or incurred by the Receivers in said causes in the operation, or on account of, the property embraced in said First Mortgage of The Union Pacific Railroad Company at any time before the same shall be delivered to the purchaser or purchasers, and also any such unpaid compensation which has been or shall be allowed by the court to the receivers or their solicitors in the cause in which Oliver Ames, Second, Samuel Carr, and others, are complainants, and The Union Pacific Railway Company and others are defendants, pending in said courts, and known as the "Ames Cause," and all such unpaid indebtedness, obligations,

5946 and liabilities of the said receivers in said Ames cause which shall have been allowed or legally contracted or incurred by the said receivers in the operation of said property embraced in said First Mortgage, and shall be properly chargeable to said property to the extent to which the revenues and assets in the hands of said receivers in said Ames cause shall be insufficient to pay and discharge such compensation, indebtedness, obligations, and liabilities in said cause.

Seventh. Any indebtedness or liability contracted or incurred by The Union Pacific Railway Company, or by the said Receivers in the said Ames Cause, in the operation of the property covered by and embraced in the said First Mortgage of November 1st, 1865, prior to the appointment of the Receivers in the causes in which Dexter and Ames are complainants, which are prior in lien to said First Mortgage, and payment whereof was provided for by order of said Circuit Court for the District of Nebraska, dated January 21st, 1895, in said cause, and which shall not, at the time of such delivery of possession, have been paid or satisfied out of the income of the property in the hands of the Receivers, upon the Court adjudging the same to be prior in lien to said First Mortgage, and directing payment

thereof: provided that suit be brought for the enforcement of such indebtedness or liability incurred by said Railway Company or Receivers within the period allowed by the statute of limitations applicable thereto, after such indebtedness or liability was contracted or arose:

And subject, also, to all other terms, conditions, and reservations of each of the said several decrees of foreclosure and sale and
5947 the several decrees confirming the said sale entered in the United States Circuit Courts for the District of Nebraska, the Southern District of Iowa, the Districts of Wyoming, Colorado, and Utah, respectively, whether in this Indenture expressly referred to or not, including the reservation of the said Courts to retake and resell the premises herein conveyed in case the party of the sixth part to this Indenture or its successors or assigns should fail to pay any sum required to be paid under the said decrees within the time specified in said decrees respectively after the entry of an order requiring such payment.

And this Indenture further *witnesseth*, that, whereas in and by the said decrees of foreclosure and sale of the said railroad, franchises, property and premises hereinbefore and in the said decrees described, the said Receivers and the Receivers theretofore appointed in the said Ames Cause were ordered and directed to make and deliver a sufficient deed conveying and assigning to the Purchaser or Purchasers at the said Master's Sale and his or their assigns, all their right, title, and interest in, of, or to any property vested or standing in their names, or to which they have acquired title, as such Receivers, in the management or operation of the premises covered by and embraced in said First Mortgage so far as the same shall be appurtenant to said premises:—

Now therefore the said Receivers as aforesaid, *parties of the second part hereto*, for and in consideration of the premises and of the sums as aforesaid paid by the said purchasers and of the assignment of the said bid by the said purchasers to the party of the sixth part hereto and in pursuance of the said decrees of the said courts respectively, have granted, bargained, sold, assigned, transferred
5948 and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey unto the said party of the sixth part to-wit, Union Pacific Railroad Company, the corporation organized as aforesaid under and pursuant to the laws of the State of Utah, all their right, title and interest in, of, or to, any property vested or standing in their names, or to which they have acquired title or right as such Receivers in the management and operation of the premises covered by and embraced in the said First Mortgage, so far as the same may be appurtenant to the said premises, and including any property and income acquired or received by the said Receivers as Receivers in the said causes through the operation of the mortgaged premises and any property acquired by the Receivers in the said Ames Cause for, or appropriated by them to the use of,

the railroad and telegraph covered by the said First Mortgage, or necessary to the said railroad and telegraph line for running and operating the same, as fully and absolutely as the said Receivers may or ought by virtue of the said decrees to convey the same, *subject, nevertheless*, to all the debts, liabilities and obligations of the said Receivers as specified in the said decrees; *To have and to hold* all and singular the said property, real and personal, unto the said party of the sixth part hereto, its successors and assigns forever.

And this Indenture further witnesseth that the said F. Gordon Dexter and Oliver Ames, parties of the third part hereto, as Trustees under the said First Mortgage, dated November 1, 1865, described in the said decrees, in consideration of the premises and of the payment of the sums as aforesaid by the said purchasers and of the assignment of the said bid by the said purchasers to the party of the
5949 sixth part hereto, and in pursuance of the said decrees and orders of the said Courts, respectively, have transferred and released, and by these presents do transfer and release, to the said Union Pacific Railroad Company, party of the sixth part hereto, its successors and assigns forever, all the right, title and interest of the said parties of the third part hereto in and to all the property covered by the said First Mortgage or upon which the said First Mortgage is a lien, as fully and absolutely as they may or ought by virtue of the said decrees to transfer and release the same: To have and to hold all and singular the said railroad, property and premises unto the said party of the sixth part hereto, its successors and assigns forever.

And this Indenture further witnesseth that said The Union Pacific Railway Company, party hereto of the fourth part, for and in consideration of the premises and in pursuance of the said decrees and orders of the said Courts respectively, has bargained, sold, assigned, transferred, conveyed and released, and by these presents does bargain, sell, assign, transfer, convey and release unto the party hereto of the sixth part, all the right, title and interest of The Union Pacific Railway Company, party hereto of the fourth part, in and to the said railroad, rights, properties, functions, franchises, privileges, immunities, money and credits which by the said decrees were ordered to be sold, and all the property described in the said decrees and therein ordered to be sold and herein conveyed, assigned, transferred or released by the parties of the first, second and third parts, respectively, to this Indenture, as fully and absolutely as the said party of the fourth part hereto can or ought by virtue of the said decrees
5950 to convey the same: *To have and to hold* all and singular the said railroad, premises and property, real and personal, unto the said party of the sixth part hereto, its successors and assigns forever.

And this Indenture further witnesseth that the said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, being the purchasers at the said sale of the said railroad, property and premises

herein conveyed by the said Special Master under the said decrees of foreclosure, having assigned, transferred and set over, as hereinbefore recited, unto the party of the sixth part their said bid and their right to receive conveyance of the railroad, franchises and other property purchased, and all their other rights under the said decrees, or by virtue of their said bid and purchase, do hereby join in the execution of this Indenture for the purpose of releasing and confirming, and they do hereby release and confirm unto the said Union Pacific Railroad Company, party hereto of the sixth part, and its successors and assigns forever all of their right, title and interest in and to the property and premises in this Indenture conveyed and each and every part thereof.

It is understood that no personal covenant or liability is to be implied from this deed against the said parties of the first, second, third and fifth parts or against any of such parties.

In order to facilitate the recording hereof, twenty-five originals of this indenture have been executed, acknowledged and delivered by the respective parties, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and
5951 delivered, shall be deemed an original and all collectively but one instrument.

In witness whereof, the said parties hereto of the first, second, third and fifth parts, have hereunto set their hands and seals, and the parties of the fourth and sixth parts have caused these presents to be signed by their respective officers, duly authorized, and their respective corporate seals to be hereto affixed, and attested by their respective secretaries the day and year first above written.

WILLIAM D. CORNISH,	[SEAL.]	Special Master.
S. H. H. CLARK,	[SEAL.]	As Receivers.
OLIVER W. MINK,	[SEAL.]	
E. ELLERY ANDERSON,	[SEAL.]	
J. W. DOANE,	[SEAL.]	
F. R. COUDERT,	[SEAL.]	
F. GORDON DEXTER,	[SEAL.]	As Trustees.
OLIVER AMES,	[SEAL.]	
LOUIS FITZGERALD,	[SEAL.]	Purchasing Trustees.
ALVIN W. KRECH,	[SEAL.]	

THE UNION PACIFIC RAILWAY COMPANY,
By S. H. H. CLARK, *President*.
[SEAL.]
Attest:
ALEX MILLAR, *Secretary*.

5852 UNION PACIFIC RAILROAD COMPANY,
By HORACE G. BURT, *President*.
[SEAL.]
Attest:
ALEX. MILLAR, *Secretary*.

Signed, sealed, and delivered by William D. Cornish, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, Louis Fitzgerald, and Alvin W. Krech, in the presence of—	LAWRENCE GREER. EDWARD VAN INGEN.
By Silas H. H. Clark in the presence of—	T. M. ORR. F. C. DAVIS.
By F. Gordon Dexter and Oliver Ames in the presence of—	LAWRENCE GREER. EDWARD VAN INGEN.
By S. H. H. Clark, President, on behalf of The Union Pacific Railway Company, in the presence of—	T. M. ORR. F. C. DAVIS.
By Alex. Millar, Secretary, on behalf of The Union Pacific Railway Company, in the presence of—	LAWRENCE GREER. EDWARD VAN INGEN.
By Horace G. Burt, President, and Alex. Millar, Secretary, on behalf of Union Pacific Railroad Company, in the presence of—	LAWRENCE GREER. EDWARD VAN INGEN.

5953 Mr. LOVETT. I now offer Defendants' Exhibit 16-B, being copy of a third report of sale made by the Special Master in the foreclosure suit of the United States against the Union Pacific Main Line in the Circuit Court of the United States for the Districts of Nebraska, Colorado, Wyoming, Utah and the Southern District of Iowa, dated January 27, 1898, together with exhibits A, B, C, D, and E, thereto. I do not offer exhibits F and G because F is a copy of the instrument executed by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees assigning their bid to the Union Pacific Railroad Company, and G is a copy of the deed of the Special Master and others to the Union Pacific Railroad Company which instruments will be separately introduced as Defendants' Exhibits Nos. —— and —— respectively.

DEFENDANTS' EXHIBIT 16-B.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
THE UNION PACIFIC RY. CO., ET. AL., DEFENDANTS.

THIRD REPORT OF WM. D. CORNISH, SPECIAL MASTER UNDER DECREE OF FORECLOSURE ENTERED HEREIN.

To the honorable the Circuit Court of the United States for the district and in the cause above entitled:

I hereby respectfully report that Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have paid the full amount of

5954 $40.253,605.49, in compliance with the order of Court entered herein confirming sale under the decree of foreclosure herein, of the railroad, franchises and property described in said decree, made by me to said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, on November 1, 1897, which sale was reported by me herein under date of November 2, 1897, and that such sum has been paid and applied at the times and in the manner as follows:

First. As reported by me in my first report upon said sale there was deposited with me on October 25, 1897, to qualify said Purchasing Trustees to bid at said sale, a certified check for $2.000,000 and there was also deposited with me by said Purchasing Trustees upon the acceptance of their bid by me a further certified check in the sum of $4,100,000. Complying with the request of the Secretary of the Treasury as to the manner in which said sums should be paid over to the United States, I deposited said checks in the aggregate amount of $6,100,000 in the National City Bank of New York, to the credit of the Treasurer of the United States, on November 29, 1897, and thereupon received the receipt of the Secretary of the Treasury therefor which receipt is dated December 1, 1897, and a copy thereof is hereto attached and marked Exhibit A.

Second. On December 6th, 1897, said Purchasing Trustees paid into the Treasury of the United States the sum of $8,538,401.38 by depositing the same, in the National City Bank of New York, to the credit of the Treasurer of the United States; and thereupon the Secretary of the Treasury made and delivered to me his receipt for such payment, which receipt is dated December 8, 1897, and a copy thereof is hereto attached and marked Exhibit B.

5955 Third. On December 16, 1897, said Purchasing Trustees paid into the Treasury of the United States the sum of $8,538,-401.38 by depositing the same under the instructions of the Secretary of the Treasury, with C. N. Jordan, Assistant Treasurer of the United States in New York, to the credit of the Treasurer of the United States; and thereupon the Secretary of the Treasury made and delivered to me his receipt for such payment which receipt is dated December 18, 1897, and a copy thereof is hereto attached, and marked Exhibit C.

Fourth. On December 27, 1897, said Purchasing Trustees paid into the Treasury of the United States the sum of $4,000,000 by depositing the same under the instructions of the Secretary of the Treasury in the National City Bank of New York to the credit of the Treasurer of the United States, and on December 28, 1897, the said Purchasing Trustees also paid into the Treasury of the United States the further sum of $4,538,401.38, by depositing the same under the instructions of the Secretary of the Treasury with C. N. Jordan, Assistant Treasurer of the United States; and thereupon the Secretary of the Treasury made and delivered to me his receipt for such payments, which receipt is dated December 31, 1897, and a copy thereof is hereto attached and marked Exhibit D.

Fifth. On January 6, 1898, said Purchasing Trustees paid into the Treasury of the United States the sum of $8,538,401.35 by depositing the same under the instructions of the Secretary of the Treasury, with C. N. Jordan, Assistant Treasurer of the United States; and thereupon the Secretary of the Treasury made and delivered to me his receipt for such payment which receipt is dated January 8, 1898, and a copy thereof is hereto attached and
5956 marked Exhibit E.

Sixth. That the sums so paid into the Treasury of the United States amount in the aggregate to the said sum of $40,253,605.49.

Seventh. I further report that said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have assigned and transferred their said bid, and all their rights as bidders and purchasers at said sale of said railroad, franchises and property to the Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah, as appears by a counterpart original of such assignment which has been exhibited to me, and is hereto attached and marked Exhibit F.

Eighth. I further report that it appearing that said Purchasing Trustees have complied with all the conditions of said decrees of foreclosure, and the order of court confirming the sale thereunder, and that said Union Pacific Railroad Company as the assignee of said Purchasing Trustees is entitled thereto, I have under the authority of said decrees of foreclosure, and in compliance with the requirements thereof, made, executed, acknowledged and delivered to said Union Pacific Railroad Company, my deed, as Special Master, of the railroad, franchises and property sold by me under said decrees of foreclosure as hereinbefore reported by me, which deed is in the form and contains the provisions and bears date as shown in a copy thereof hereto attached, and marked Exhibit G. That I have so executed and delivered twenty-five counterpart originals of said deed for convenience and purposes of record of the same.

Ninth. That I have performed all the duties imposed upon me as Special Master appointed to make the sale under the decree
5957 of foreclosure herein, and that all of the proceeds of said sale have been paid over to and have been accepted by the complainant herein, and that no money derived from said sale remains in my possession.

Respectfully submitted.

WM. D. CORNISH,
Special Master.

Dated, January 27, 1898.

EXHIBIT A (of Defendants' Exhibit 16 B).

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH, AND THE SOUTHERN DISTRICT OF IOWA.

THE UNITED STATES OF AMERICA, complainant,
vs.
THE UNION PACIFIC RAILWAY COMPANY, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, receivers; F. Gordon Dexter and Oliver Ames, as trustees; Union Trust Company of New York, as trustee; J. Pierpont Morgan and Edwin F. Atkins, as trustees, and the Central Trust Company of New York, as trustee, defendants.

To WILLIAM D. CORNISH, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by you as
5958 Special Master in the above entitled cause, to the United States of America of the sum of six million one hundred thousand dollars, moneys deposited with you by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, as purchasers under the sale of the property of the Union Pacific Railway Company made on November 1, 1897, upon the subsidy lien of the United States adjudged upon in said decrees, which sum so paid by you is to be applied in part payment upon the purchase price for which said property was struck off at said sale.

This payment has been made by you in the form of two certified checks, one in the sum of two million dollars, and one in the sum of four million one hundred thousand dollars, both payable to your order as Special Master, and endorsed by you under my direction. This receipt is made to you to make your report thereon in this cause.

As instructed by this Department the above sum of six million one hundred thousand dollars was deposited in the Treasury by you November 29, 1897, as shown by Certificate of Deposit No. 2, issued by the National City Bank of New York, a U. S. Depositary in duplicate, the original of which has been duly received at the Department.

L. J. GAGE,
Secretary of the Treasury.

EXHIBIT B (of Defendants' Exhibit 16 B).

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH, AND THE SOUTHERN DISTRICT OF IOWA.

5959 THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE UNION PACIFIC RY. CO., ET AL., DEFENDANTS.

To WILLIAM D. CORNISH, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees in the above entitled cause, to the United States of America of the sum of eight million five hundred and thirty-eight thousand four hundred and one and 38/100 dollars, as purchasers under the sale of the property of the Union Pacific Railway Company made November 1, 1897, upon the subsidy lien of the United States adjudged upon in the decrees entered herein, on account of and in part payment of the purchase price for which said property was struck off to said purchasers at said sale.

As instructed by this Department the above sum of $8,538,401.38, was deposited in the Treasury by Louis Fitzgerald and Alvin W. Krech, on December 6, 1897, as shown by certificate of deposit No. 3, issued by the National City Bank of New York, a United States depositary, in triplicate, the original of which has been duly received at the Department.

This receipt is made to you to enable you to make your report thereon in this cause.

L. J. GAGE,
Secretary of the Treasury.

DECEMBER 8, 1897.

5960 EXHIBIT C (of Defendants' Exhibit 16 B).

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH, AND THE SOUTHERN DISTRICT OF IOWA.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE UNION PACIFIC RY. CO., ET AL., DEFENDANTS.

To WILLIAM D. CORNISH, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees in the above entitled cause, to the United States of America, of the sum of eight million five hundred and thirty-eight thousand four hundred and one and 38/100 dollars, as purchasers under the sale of the property of the

Union Pacific Railway Company made November 1, 1897, upon the subsidy lien of the United States adjudged upon in the decrees entered herein, on account of and in part payment of the purchase price for which said property was struck off to said purchasers at said sale.

As instructed by this Department the above sum of $8,538,401.38 was deposited in the Treasury by said Louis Fitzgerald and Alvin W. Krech on December 16, 1897, as shown by certificate No. 714, issued by C. N. Jordan, Assistant Treasurer United States, in
5961 duplicate, the original of which has been duly received at the Department.

This receipt is made to enable you to make your report thereon in this cause.

L. J. GAGE,
Secretary of the Treasury.

Dated December 18, 1897.

EXHIBIT D (of Defendants' Exhibit 16 B).

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH AND THE SOUTHERN DISTRICT OF IOWA.

UNITED STATES OF AMERICA, COMPLAINANT,
vs
THE UNION PACIFIC RY. CO., ET AL., DEFENDANTS.

To WILLIAM D. CORNISH, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees in the above entitled cause, to the United States of America, of the sum of eight million five hundred and thirty-eight thousand four hundred and one and 38/100 dollars, as purchasers under the sale of the property of the Union Pacific Railway Company made November 1, 1897, upon the subsidy lien of the United States adjudged upon in the decrees
5962 entered herein, on account of and in part payment of the purchase price for which said property was struck off to said purchasers at said sale.

As instructed by this Department the above sum of $8,538,401.38 was paid into the Treasury of the United States by said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, as follows: $4,000,000 thereof was deposited by said Purchasing Trustees in the National City Bank of New York on December 27, 1897, to the credit of the Treasurer of the United States, certificate No. 4, and $4,538,401.38 thereof was deposited by said Purchasing Trustees in the Subtreasury of the United States at New York on December 28, 1897, as shown by certificate No. 759, issued by C. N. Jordan, Assistant

Treasurer, in duplicate, the original of which has been duly received at the Department.

This receipt is made to enable you to make your report thereon in this cause.

L. J. GAGE,
Secretary of the Treasury.

Dated December 31, 1897.

EXHIBIT E (of Defendants' Exhibit 16 B).

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF NEBRASKA, COLORADO, WYOMING, UTAH AND THE SOUTHERN DISTRICT OF IOWA.

UNITED STATES OF AMERICA, COMPLAINANT,
vs
UNION PACIFIC RY. CO., ET AL., DEFENDANTS.

5963 To WILLIAM D. CORNISH, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees in the above entitled cause, to the United States of America of the sum of Eight million five hundred and thirty-eight thousand four hundred and one and 35/100 dollars, as purchasers under the sale of the property of the Union Pacific Railway Company made November 1, 1897, upon the subsidy lien of the United States adjudged upon in the decrees entered herein, on account of and in part payment of the purchase price for which said property was struck off to said purchasers at said sale.

As instructed by this Department the above sum of $8,538,401.35 was deposited in the Treasury by said Louis Fitzgerald and Alvin W. Krech on January 6, 1898, as shown by certificate No. 804, issued by C. N. Jordan, Assistant Treasurer of the United States, in duplicate, the original of which has been duly received at the Department.

This receipt is made to enable you to make your report thereon in this cause.

L. J. GAGE,
Secretary of the Treasury.

Dated January 8, 1898.

It is stipulated that the foregoing copy of Special Master's Third Report of Sale in the case mentioned may be used as evidence with the same force and effect as the original, subject to correction; and also that exhibits F and G annexed thereto need not be introduced as part of the said report.

5964 Mr. LOVETT. I now offer Defendants' Exhibit 16–C, being copy of a decree, dated January 31, 1898, of the Circuit Court of the United States for the Districts of Nebraska, Colorado, Wyoming, Utah, and the Southern District of Iowa, confirming the Special Master's Third Report of Sale in the suit of the United States of America against The Union Pacific Railroad Company.

DEFENDANTS' EXHIBIT 16 C.

CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF NEBRASKA.

UNITED STATES OF AMERICA, COMPLAINANT,
against
THE UNION PACIFIC RAILWAY COMPANY, ET AL., DEFENDANTS.

ORDER CONFIRMING THIRD REPORT OF SPECIAL MASTER.

Upon reading the third report of William D. Cornish, Special Master appointed to make the sale under the decree of foreclosure herein, which report relates to the payment to the United States by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, of the full sum of $40,253,605.49 the purchase price for the railroad property sold under the decree herein on the 1st day of November, 1897, as provided in an order of court confirming said sale entered herein and relating further to the assignment by said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, of their said bid for said property and their rights thereunder, to Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah, and to the execution and delivery by said

5965 Special Master and by the Union Pacific Railway Company and said Purchasing Trustees to said Union Pacific Railroad Company of the deed of conveyance of the railroad property sold herein as provided in said decree and which report is dated January 27, 1898; and it appearing that the several parties in interest have consented to the confirmation of said report as appears by the stipulation of said parties attached thereto, it is

Ordered that the said report be filed herewith and that said report and the action of the Special Master therein reported be, and the same is, in all things hereby approved and confirmed.

WALTER H. SANBORN,
Circuit Judge.

Dated January 31, 1898.

It is stipulated that the foregoing copy of decree of confirmation being Defendants' Exhibit No. 16–C may be used as evidence with the same force and effect as the original or a duly certified copy subject to correction.

5966 Mr. LOVETT. It is stipulated that on the 29th day of January, 1897, the United States of America filed in the Circuit Court of the United States for the district of Nebraska a bill to foreclose a lien existing under certain acts of Congress mentioned in the decree afterwards rendered in said cause against the line of railroads extending

from Council Bluffs, Iowa, to Ogden, Utah, particularly described in the said decree, and that on the 29th day of July, 1897, the said court in said cause rendered a decree of foreclosure and sale. I now offer a copy of said decree as Defendants' Exhibit 17.

It is stipulated that the copy offered may be used in place and stead of the original, subject to correction.

Defendants' Exhibit 17 is as follows:

DEFENDANTS' EXHIBIT 17.

At a session of the Circuit Court of the United States held in and for the district of Nebraska on the 29th day of July, 1897.

Present: Hon. Walter H. Sanborn, Circuit Judge.

THE UNITED STATES OF AMERICA, COMPLAINANTS, *vs.* THE UNION PACIFIC RAILWAY COMPANY, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederick R. Coudert, receivers; F. Gordon Dexter and Oliver Ames as trustees; Union Trust Company of New York, as trustee; J. Pierpont Morgan and Edwin F. Atkins, as trustees; and The Central Trust Company of New York, as trustee, defendants.	Union Division.

5967

FINAL DECREE.

This cause came on to be heard upon the bill of complaint of the United States of America, complainants, and upon the several answers of The Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers; F. Gordon Dexter and Oliver Ames, as Trustees; Union Trust Company of New York, as Trustee; J. Pierpont Morgan and Edwin F. Atkins, as Trustees; and the Central Trust Company of New York as Trustee; and upon the replications to said answers, respectively; and upon the proofs and exhibits in said cause and the report thereon of William D. Cornish, Special Master, to whom said cause was referred by order dated March 25, 1897, and which report was filed in said cause on the 29th day of July, 1897, and upon the exceptions to said report filed by the complainants, and by the defendants Dexter and Ames as trustees, and upon all the papers and proceedings in said cause; and the complainants in said cause appeared by the Attorney-General, and by Mr. George Hoadly, Special Assistant to the Attorney-General, and Mr. John C. Cowin, Special Counsel for the United States, and the defendants therein, hereinbefore named, appeared by their respective solicitors and counsel, to wit: The Union Pacific Railway Company by Mr. William R. Kelly; Union Trust Company of New York, as Trustee, by Mr.

Wheeler H. Peckham; J. Pierpont Morgan and Edwin F. Atkins, as Trustees, by Mr. Victor Morawetz; the Central Trust Company of New York, as Trustee, by Mr. Henry W. Calhoun; F. Gordon Dexter and Oliver Ames, as Trustees, by Mr. Winslow S. Pierce; and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers, by Mr. Wm. R. Kelly; and said
5968 cause having been argued by counsel, and the Court being fully advised in the premises, it is

ORDERED, ADJUDGED AND DECREED,

1. That each and every exception taken to the Report of William D. Cornish, Special Master, to whom this cause was referred by order herein dated March 25th, 1897, (which said report was filed in this cause upon the 29th day of July, 1897), be and the same is hereby over-ruled and disallowed, and said report is in all respects approved and confirmed, except as herein otherwise expressly determined. To which action of the Court in over-ruling the said exceptions to said report taken by the complainants, (and each of them,) the complainants now except.

2. And it is further considered by the Court upon the pleadings and proofs, that the equity of the cause is with the complainants, and that they are entitled to the relief sought by their bill, so far as not otherwise held by said Master in his report so as aforesaid confirmed and approved. That the said United States of America duly instituted this suit and became parties complainant to this cause by action of the Attorney-General of the United States duly had and taken on their behalf, pursuant to the authority provided by law, and as directed by the President of the United States.

3. That The Union Pacific Railroad Company was duly incorporated and organized under and by virtue of an Act of Congress of the United States, entitled "An Act to aid in the construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1st, 1862;
5969 also, an Act of Congress amendatory thereof, approved July 2d, 1864, and other Acts of the Congress of the United States amendatory thereof and supplemental thereto.

And said The Union Pacific Railroad Company was, by the legislation aforesaid, authorized to lay out, locate, construct, furnish, maintain and enjoy the continuous railroad and telegraph described and embraced in the First Mortgage of said Railroad Company hereafter described, and which said railroad extends from Council Bluffs, on the Iowa bank of the Missouri River, across said river and through the States of Nebraska, Wyoming and Colorado, into the State of Utah, to a connection with the railroad of the Central Pacific Railroad Company, at a point about five miles West of the City of Ogden, in the State of Utah, a distance of 1,042.41 miles, more or less, of main line, including the bridge over the Missouri River between

Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska; all of which line of railroad and telegraph and bridge, with the branches and appurtenances thereof, were located, constructed, equipped and furnished by The Union Pacific Railroad Company, as, in the manner and upon the conditions, within the times and upon the approvals and consents contemplated, defined and described in said legislation.

That the said The Union Pacific Railway Company was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several acts of the Congress of the United States, by the consolidation of The Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, and said The
5970 Union Pacific Railway Company, so created, thereupon became the successor to each and all of the said constituent Companies, and thereby became vested with all the rights, titles, interest, lands and land grants, properties and franchises of each and all of the said constituent Companies; and said The Union Pacific Railway Company is the owner of the said railroad, property and franchises embraced in the ipso facto mortgage securing subsidy lien bonds to the complainants, and in the First mortgage of the Union Pacific Railroad Company dated November 1st, 1865, under which the defendants F. Gordon Dexter and Oliver Ames, are Trustees, and which is hereinafter more fully referred to; and said The Union Pacific Railway Company, in addition thereto, is the owner of the further lines of railway and property described in the original bill of complaint herein extending from Kansas City, in the State of Missouri, westwardly through the State of Kansas and into the State of Colorado to Denver, and from Denver in the State of Colorado, in a northerly direction, to Cheyenne, in the State of Wyoming.

4. That, beginning on February 1st, 1866, under and in pursuance of the legislation aforesaid, there were issued and delivered by the Secretary of the Treasury of the United States to the said The Union Pacific Railroad Company bonds of the United States (hereinafter termed Subsidy Bonds), of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest, payable semi-annually in lawful money and legal tender of the United States, to the amount of $27,236,512, all of which bonds were of the tenor and effect described in said Acts of the Congress of the United States, approved July 1st, 1862, and July 2nd,
5971 1864, and were issued and delivered by the said Secretary of the Treasury to the said Railroad Company as, in the manner, and upon the conditions prescribed in said Acts, and the issue of said bonds and the delivery thereof to the said Company did, by force of law, ipso facto constitute a mortgage on the whole line of railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, including all the rights, franchises and appurtenances thereunto belonging, and in consideration of which said bonds were issued, which said lien of the United States

was, by the provisions of said Act of Congress of July 2d, 1864, made subordinate to the lien of first mortgage bonds authorized to be issued upon the railroad and telegraph lines of said The Union Pacific Railroad Company to an amount not exceeding the amount of said Subsidy Bonds of the United States on its road, property and equipments, except as to such provisions of the sixth section of said Act of July 1st, 1862, which reserved to the United States a preference in the use of the said railroad and telegraph line for the transmission of despatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service.

That the Subsidy Bonds of the United States so issued and delivered by the Secretary of the Treasury of the United States to The Union Pacific Railroad Company, in pursuance of the Acts of the Congress of the United States aforesaid, bore respectively the dates of issue, were issued in the respective amounts, matured and will mature
5972 at the respective dates and bore interest from the respective dates, as appears in the following tabulated statement thereof, to-wit:

Maturity of bonds.	Date of issue.	Commencement of interest.	Amount.	Total.
February 1, 1896	Feb. 1, 1866	Feb. 1, 1866	$640,000	
	May 7, 1866	May 7, 1866	400,000	
	June 26, 1866	June 26, 1866	640,000	
	July 13, 1866	July 13, 1866	320,000	
	Aug. 9, 1866	Aug. 9, 1866	560,000	
	Sept. 11, 1866	Sept. 11, 1866	720,000	
	Oct. 13, 1866	Oct. 13, 1866	560,000	
	Nov. 8, 1866	Nov. 7, 1866	480,000	
				$4,320,000
January 1, 1897	Jan. 9, 1867	Jan. 8, 1867	560,000	
	June 11, 1867	June 10, 1867	640,000	
	July 6, 1867	July 6, 1867	640,000	
	Aug. 29, 1867	Aug. 29, 1867	560,000	
	Oct. 2, 1867	Oct. 2, 1867	560,000	
	Nov. 5, 1867	Nov. 5, 1867	560,000	
	Dec. 13, 1867	Dec. 13, 1867	320,000	
				3,840,000
January 1, 1898	Jan. 28, 1868	Jan. 27, 1868	957,000	
	May 18, 1868	May 16, 1868	960,000	
	May 19, 1868	May 18, 1868	960,000	
	June 12, 1868	June 12, 1868	960,000	
	June 17, 1868	June 18, 1868	960,000	
	July 23, 1868	July 22, 1868	960,000	
	July 25, 1868	July 24, 1868	1,841,000	
	Aug. 12, 1868	Aug. 11, 1868	640,000	
	Aug. 29, 1868	Aug. 28, 1868	640,000	
5973	Sept. 7, 1868	Sept. 7, 1868	1,280,000	
	Sept. 23, 1868	Sept. 23, 1868	640,000	
	Oct. 22, 1868	Oct. 21, 1868	640,000	
	Nov. 20, 1868	Nov. 19, 1868	640,000	
	Dec. 7, 1868	Dec. 7, 1868	1,280,000	
	Dec. 15, 1868	Dec. 14, 1868	640,000	
	Dec. 17, 1868	Dec. 16, 1868	640,000	
	Dec. 24, 1868	Dec. 23, 1868	640,000	
	Dec. 24, 1868	Dec. 24, 1868	640,000	
	July 15, 1870	Nov. 21, 1868	1,512	
				15,919,512
January 1, 1899	Jan. 29, 1869	Jan. 29, 1869	640,000	
	Feb. 10, 1869	Feb. 10, 1869	1,280,000	
	July 22, 1869	July 16, 1869	640,000	
	Nov. 10, 1869	July 16, 1869	437,000	
	July 14, 1870	July 16, 1869	160,000	
				3,157,000
Total				27,236,512

That said Subsidy Bonds so issued by the United States to said railroad company were by said railroad company sold, and the proceeds of such sales applied to its own use in aid of the construction and equipment of its said railroad.

5. That the provisions of the original, amended and supplemental acts of Congress hereinbefore and in the bill of complaint of the United States of America referred to, and the issue and delivery of said Subsidy Bonds, as provided in said Acts of Congress, create and constitute an ipso facto mortgage and lien, as in said Acts of Congress provided, in favor of the United States, to secure the repay-
ment to the United States of the amount of said Subsidy Bonds
5974 so issued and delivered to said The Union Pacific Railroad
Company, together with all interest thereon which should have been paid by the United States, which said mortgage and lien are herein designated the Subsidy Lien.

The said Subsidy lien is a mortgage and lien upon the whole line of railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds were issued, formerly belonging to the Union Pacific Railroad Company, with all the rights, functions, immunities and appurtenances thereunto belonging, and upon all the property, estate, rights and franchises of every kind and description granted or conveyed by the United States to said The Union Pacific Railroad Company, and also as and to the extent by law provided upon all the estate and property, real, personal and mixed, assets and income of the said The Union Pacific Railroad Company, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien or claim thereon, including all estate, property and assets derived by the said defendant The Union Pacific Railway Company from the said The Union Pacific Railroad Company, by virtue and force of said consolidation.

6. That of said Subsidy Bonds of the United States so issued and delivered to the said The Union Pacific Railroad Company by the Secretary of the Treasury of the United States $4,320,000 of the principal thereof matured on February 1st, 1896, and the same, together with all interest then due thereon, were then paid by the United States; and $3,840,000 of the principal thereof matured on January 1st, 1897, and the same, together with all interest then due thereon, were then paid by the United States.

Subsidy bonds of the United States remain outstanding and
5975 unpaid to the par value of $19,076,512, of which $15,919,512
will mature on January 1st, 1898, and $3,157,000 will mature on January 1st, 1899.

That all of the interest on all of said subsidy bonds of the United States has been paid by the United States as the same has from time to time matured.

7. That sums of money have been paid to and received by the United States, and further sums of money, representing compensa-

tion earned by The Union Pacific Railroad Company and the said The Union Pacific Railway Company and the said Receivers for the performance of service for the Government, have been lawfully retained by the United States, and a portion of the sums so received and retained has been credited to what is known as the "Bond and Interest Account," and said portion of the said sums so credited aggregated on the first of April, 1897, the amount of $16,256,321.29, which last-mentioned amount the said The Union Pacific Railroad Company and its said successor, The Union Pacific Railway Company were entitled to have credited and which have been by the United States credited towards and in partial repayment of the interest paid by the United States upon said Subsidy Bonds; and further sums representing such earnings have been likewise lawfully retained by the United States, which have been credited to said Union Pacific Railway Company or with which said company is entitled to be credited, but the extent whereof is incapable of exact statement at the date of this decree, but such credits and the current additions to the Sinking Fund hereinafter mentioned have not exceeded the accumulation of the Subsidy Debt. The total amount of indebted-
5976 ness on account of said Subsidy Bonds, matured and unmatured, for principal and interest, after deducting the said amount received by the United States upon said interest account, was, on April 1st, 1897, as nearly as such account can be now stated, for

principal	$27,236,512.00
for balance of Interest Account	30,525,918.00
Total	$57,762,430.00

8. That under and in pursuance of the provisions of the Act of Congress of the United States, approved May 7th, 1878, of said sums of money so paid to and received by the United States and of said sums of money representing compensation for the performance of service to the Government so retained by the United States, the total amount of $19,217,713.40 had, on and before the 31st day of December, 1896, been received in the Treasury of the United States and in part invested by the Secretary of the Treasury in certain bonds which are held in and constitute in part the Sinking Fund established by said last-mentioned Act of Congress, so far as the same relates to The Union Pacific Railroad Company and its successor, The Union Pacific Railway Company, and so far as the same is known as the United States Union Pacific Sinking Fund. That said United States Union Pacific Sinking Fund consists of cash and of bonds, and the bonds therein are as shown in the following tabulated statement, which statement also shows which of said bonds are not due and which of said bonds are due and the rates of interest, dates of maturity, dates when interest is payable and dates of last payment of interest as to each class of bonds embraced in said Sinking Fund:

5977 *Statement of Bonds in the United States Union Pacific Sinking Fund.*

Bonds.	Not due.	Due but unpaid.	Rate of interest.	Maturity of bond.	Interest payable.	Date of last payment of interest.
			Per cent.		(1st day of)	
U. S. 5% of 1904	$915,750		5	Feb. 1, 1904	Feb., May, Aug., Nov.	Feb. 1, 1897
U. S. 6% of 1898	523,000		6	Jan. 1, 1898	Jan., July	Jan. 1, 1897
U. S. 6% of 1899	41,000		6	Jan. 1, 1899	Jan., July	Jan. 1, 1897
FIRST MORTGAGE BONDS.						
Union Pacific due Jan. 1, 1896		$929,000	6	Jan. 1, 1896	Jan., July	Jan. 1, 1897
Union Pacific due Jan. 1, 1897		350,000	6	Jan. 1, 1897	Jan., July	Jan. 1, 1897
Union Pacific due July 1, 1897	473,000		6	July 1, 1897	Jan., July	Jan. 1, 1897
Union Pacific due Jan. 1, 1898	1,534,000		6	Jan. 1, 1898	Jan., July	Jan. 1, 1897
Union Pacific due July 1, 1898	2,530,000		6	July 1, 1898	Jan., July	Jan. 1, 1897
Union Pacific due Jan. 1, 1899	545,000		6	Jan. 1, 1899	Jan., July	Jan. 1, 1897
Central Pacific due Jan. 1, 1898	2,229,000		6	Jan. 1, 1898	Jan., July	Jan. 1, 1897
Kansas Pacific due Aug. 1, 1895		549,000	6	Aug. 1, 1895	Feb., Aug	Aug. 1, 1895
Kansas Pacific due June 1, 1896		929,000	6	June 1, 1896	June, Dec	Dec. 1, 1894
Sioux City and Pacific due Jan. 1, 1898	716,500		6	Jan. 1, 1898	Jan., July	Jan. 1, 1897
Central Branch due May 1, 1895		1,025,000	6	May 1, 1895	May, Nov	Nov. 1, 1893
Western Pacific due July 1, 1899	350,000		6	July 1, 1899	Jan., July	Jan. 1, 1897
	9,863,250	3,782,000				
Total Bonds in Fund		13,645,250				

5978 That the amount of uninvested cash held in and as part of said United States Union Pacific Sinking Fund on April 30th, 1897, was the sum of $3,945,239.89, which said amount is now held in and as part of said Sinking Fund, together with, and subject to be increased by, certain further amounts representing earnings for the performance of service for the Government credited and currently to be credited to the said Sinking Fund, the extent of which amounts is incapable of exact statement as of the date of this decree.

That said United States Union Pacific Sinking Fund so established, and as the same exists, is applicable to the payment and satisfaction of the Subsidy Bonds so issued and delivered by the United States to the Union Pacific Railroad Company and of all the interest paid by the United States thereon and not reimbursed, as and upon the conditions provided in said Act of May 7th, 1878.

9. That no part of the cost or expense of the payment of said Subsidy Bonds of the United States, which have been paid as hereinbefore found, has been contributed by the said The Union Pacific Railroad Company nor by the defendant herein The Union Pacific Railway Company, except as herein stated, and no payment has been made nor security given on account of the principal of said Subsidy Bonds by said original or successor company (otherwise than as such security has resulted from the operation of law) except such security as is constituted by the Sinking Fund hereinbefore mentioned.

That the defendant The Union Pacific Railway Company has made default in the repayment to the United States of the amount of the Subsidy Bonds, so issued and delivered to the said The Union
5979 Pacific Railroad Company, which matured on the first day of

February, 1896, and in the payment of the amount of the said Subsidy Bonds so issued and delivered which matured on the first day of January, 1897, and in the repayment to the United States of all of the interest paid by it upon said Subsidy Bonds which so matured at the dates aforesaid, except to the extent of the partial repayment and reimbursement of such interest by the application of the amounts paid to and retained by the United States and credited to said Bond and Interest Account as hereinbefore found.

That the indebtedness of the said The Union Pacific Railway Company secured by said Subsidy lien, which has matured and is now due to the United States for the repayment of the amounts paid by the United States upon the principal of said matured subsidy bonds, and for repayment of the interest paid by the United States upon said matured Subsidy Bonds in excess of the amount of said Bond and Interest Account heretofore applied as aforesaid to the payment of said interest, is as follows:

For the principal of Subsidy Bonds matured February 1st, 1896	$4,320,000.00
For interest paid thereon and not reimbursed, April 30, 1897	5,401,138.83
For the principal of Subsidy Bonds matured January 1st, 1897	3,840,000.00
For interest paid thereon and not reimbursed, April 30, 1897	4,928,490.35
Total amount of matured principal and unreimbursed interest on April 30, 1897	18,489,629.18

5980 10. That the Union Pacific Railroad Company under and in pursuance of the power and authority conferred upon it by the said Acts of Congress of the United States approved July 1st, 1862, and July 2nd, 1864, and the Act of Congress approved February 24th, 1871, built and constructed as a part of its said line of railroad said bridge across the Missouri River between Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska, together with the approaches thereto and appurtenances thereof, and said Railroad Company, for the purpose of purchasing and acquiring the lands and materials necessary for the construction of the said bridge and its approaches and connecting lines, and for constructing the same, and pursuant to the authority of said Act of February 24th, 1871, and to due corporate action, issued its Bridge Bonds, each for the sum of one thousand dollars United States gold coin, or two hundred pounds British sterling money, the principal of which was payable on the first day of April, 1896, unless sooner redeemed, with interest in the meantime from the first day of April, 1871, on the principal sum at the rate of eight per centum per annum, payable in half-yearly installments of forty dollars each in United States gold coin, or eight pounds five shillings and nine pence British sterling money, each on the first day of October and first day of April in each year, upon the presentation of the coupons attached to the said bonds; and, for the purpose of securing the payment of said bonds and interest, said Railroad Company, pursuant to like authority of law and corporate action, made, executed and delivered to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins its mortgage dated on the first day of April, 1871, wherein and whereby it

5981 granted, bargained, sold, assigned, transferred, set over, enfeoffed, conveyed and confirmed to said Trustees and to their heirs and successors, and the survivors and survivor of them and the heirs of such survivor, all and singular the said bridge over the River Missouri between Omaha and Council Bluffs, and the approaches thereof and appurtenances belonging thereto, including all parts and portions of the said bridge then constructed or thereafter to be constructed, and the depots at Council Bluffs and Omaha aforesaid, and the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the neighboring lines, including in said conveyance as well the lines and tracks then constructed or those which might thereafter be constructed, and also all estates, terms and rights of way for the said bridge approaches and appurtenances, as well then held by the Company as to be thereafter acquired by it, and all the rights and privileges of the Company in, or to the said bridge, approaches or appurtenances, or touching and concerning or appertaining to the maintenance, use and occupation thereof.

That on or about the 27th day of September, 1871, said The Union Pacific Railroad Company made, executed and delivered to the said John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as trustees, its supplemental mortgage, bearing said last-mentioned date, in which supplemental mortgage it was provided, among other things, that all the said bonds should bear interest at the rate of two-fifths of one per cent. per annum, in addition to the annual eight per cent. interest provided for in the said mortgage dated April 1st, 1871, which said interest of two-fifths of one per cent.

5982 should be paid in a gross of ten per cent. upon the nominal amount of the bond, when the principal of the bond should become payable under the terms or conditions of said indenture, excepting always that those bonds which should be drawn and redeemed at ten per cent. per annum before maturity by the Sinking Fund should not carry said interest at two-fifths of one per cent; and the trustees under said mortgage were authorized and empowered to retain and deduct and to pay and discharge such installment of interest out of any funds or moneys of the company coming into their hands.

That said bonds so issued and secured by said Bridge Mortgage of April 1, 1871, and said supplemental mortgage of September 27th, 1871, are outstanding and unpaid in the face amount of $392,000, and that all said bonds matured and became due on or prior to April 1st, 1896, and that under the terms of the said mortgage and said supplemental mortgage, the principal amount due on said bonds is the face amount thereof and ten per cent. in addition thereto, being the sum of $431,000, together with interest at the rate of six per cent. per annum from the first day of April, 1897, to which date the interest upon said bonds has been paid. That said Bridge Mortgages to the extent of said sum and interest constitute the first and best lien upon the premises embraced therein and covered thereby.

That the said John Edgar Thomson and Elisha Atkins have since died, and the said John Pierpont Morgan, by survivorship, and Edwin F. Atkins, by due appointment, are now the Trustees under the said Bridge Mortgage of April 1st, 1871, and the supplemental indenture of September 27th, 1871.

11. That the said The Union Pacific Railway Company
5983 thereafter, pursuant to like authority of law and to due corporate action, did, for the purpose of funding and renewing the debt then remaining unpaid secured by said Bridge Mortgages of the Union Pacific Railroad Company of April 1st, 1871, and September 27th, 1871, issue its certain bonds of one thousand dollars each, dated the first day of October, 1885, payable on the first day of October, 1915, in gold coin of the United States of the then present weight and fineness, and bearing interest at the rate of five per centum per annum, payable semi-annually on the first day of October and April in each year, in like gold coin, on presentation and surrender of the coupons therefor, annexed to said bonds; and, likewise, pursuant to law and due corporate action, the said The Union Pacific Railway Company, in order to secure the payment of the principal and interest of said last-mentioned bonds, made, executed and delivered to the Central Trust Company of New York, as Trustee, its mortgage or deed of trust, dated on the first day of October, 1885, and known as its Omaha Bridge Renewal Mortgage, whereby the said Railway Company granted, bargained, sold, assigned, transferred and conveyed unto the said Central Trust Company of New York, as Trustee, and to its successors and assigns, all and singular the bridge, approaches and appurtenances thereto over the Missouri River, between Council Bluffs, Iowa, and Omaha, Nebraska, mentioned and described in said Act of Congress, approved February 24th, 1871, together with the rents, earnings, issues, tolls, incomes and profits thereof, including all parts and portions of said bridge then constructed, or thereafter to be constructed, and the depots at Council
Bluffs and Omaha, aforesaid, and the railroad thereover, and
5984 the lines and tracks required to perfect the said bridge, its approaches and appurtenances, and to connect the same with the lines of any railroads that were then or should thereafter be constructed to the Missouri River at Council Bluffs, Iowa, or Omaha, Nebraska, and also all the estates, lines, rights of way, as well then held by the Company as to be thereafter acquired by it, and all the rights and privileges of the Company of, in, or to the said bridge, approaches and appurtenances, or touching, concerning or appertaining to the maintenance, use and occupation thereof, and also all and singular the franchises then owned, possessed or acquired, or which should thereafter be owned, possessed or acquired by the said Railway Company in respect of said bridge, approaches or appurtenances thereto and the railroad thereover.

That there were certified and delivered to the said Railway Company $1,056,000 of said bonds, and of said bonds so certified and delivered $589,000 were negotiated and sold by said company and $145,000

were by said company pledged and remain pledged to secure certain of its indebtedness; and $322,000 of said bonds were undisposed of by said company and remained in its possession, and are now in the hands of the said receivers and have never been issued and are not outstanding, and the said defendants receivers and the defendant The Union Pacific Railway Company, are hereby perpetually enjoined from issuing, negotiating or delivering the same, and, in the event of the confirmation of any sale of the railroad property made as herein provided, they are hereby further ordered and directed to cancel the said bonds.

That the amount of the outstanding principal of said bonds secured by said Omaha Bridge Renewal mortgage of October
5985 first, 1885, and the amount of the unpaid coupons on said outstanding bonds are as follows:

Principal amount of bonds, sold and disposed of by said Railway Company	$734,000
Interest thereon from April 1st, 1894 to April 1st, 1897	110,100
Total	$844,100

And that to the extent of said bonds and interest said Omaha Bridge Renewal Mortgage of October 1st, 1885, constitutes and is the next and second lien on so much of said Union Pacific Railway as is embraced and described therein.

12. That the said The Union Pacific Railroad Company, pursuant to and in accordance with the powers conferred upon it by law, and pursuant to due corporate action and for the purpose of providing means to construct and complete its said railroad, did duly make, execute and issue under its corporate seal, and did deliver to various persons, firms and corporations, for value and for the considerations and purposes and in the manner provided by its First Mortgage hereinafter mentioned, its First Mortgage bonds to the number of 27,229, in the aggregate amount of $27,229,000, all of which bonds were, as issued and delivered, duly certified by the trustees named in said mortgage as therein provided, and all of which bonds are now outstanding, and in each of which bonds the said The Union Pacific Railroad Company promised to pay the sum of one thousand dollars to the holder thereof at its office in the City of New York, thirty years after the date thereof, and also interest thereon at the rate of six per centum per annum, payable semi-annually from the date thereof
5986 in lawful money of the United States until the principal sum should be paid, on presentation of the interest coupons annexed thereto, at the office of the said Company in the City of New York; and said bonds were issued in the installments, and bearing the dates, and maturing at the respective dates following:

Said bonds, to the amount of $6,475,000, were issued, bearing date the first day of January, 1866, and maturing by the terms thereof, on the first day of January, 1896.

Said bonds, to the amount of $1,598,000, were issued, bearing date the first day of January, 1867, and maturing, by the terms thereof, on the first day of January, 1897.

Said bonds, to the amount of $1,920,000, were issued, bearing date the first day of July, 1867, and maturing, by the terms thereof, on the first day of July, 1897.

Said bonds, to the amount of $5,999,000, were issued, bearing date the first day of January, 1868, and maturing, by the terms thereof, on the first day of January, 1898.

Said bonds, to the amount of $8,837,000, were issued, bearing date the first day of July, 1868, and maturing, by the terms thereof, on the first day of July, 1898.

Said bonds, to the amount of $2,400,000, were issued, bearing date the first day of January, 1869, and maturing, by the terms thereof, on the first day of January, 1899.

13. That, pursuant to and in accordance with the powers conferred upon it by said legislation, and pursuant to due corporate action and for the purpose of securing the payment of the bonds aforesaid, issued and to be issued, with the interest due and to grow due
5987 thereon, and for other lawful considerations, the said The Union Pacific Railroad Company did duly make and execute under its corporate seal and did deliver to Edwin D. Morgan of the City of New York, and Oakes Ames, of Easton, in the State of Massachusetts, as Trustees, a mortgage or deed of trust dated the first day of November, 1865, wherein and whereby the said The Union Pacific Railroad Company did bargain, sell, assign, transfer and set over, enfeoff, convey and confirm unto the said Edwin D. Morgan and Oakes Ames, as Trustees, and in trust for the purposes aforesaid and to the survivor of them, and to their successor or successors, all and singular, the railroad, telegraph, property and franchises in said mortgage described as follows:

"All and singular the railroad and telegraph of the said party of the first part (the said Union Pacific Railroad Company), heretofore constructed, or hereafter to be constructed, from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms and provisions of said acts of Congress, to wit, at the City of Omaha, in the territory of Nebraska; thence, as provided in said acts of Congress, through the territories of the United States to the western boundary of the late territory of Nevada, together with all its lands, tenements, hereditaments, rights of way and easements, acquired or appropriated, or which shall be hereafter acquired or appropriated, for the purpose of a right of way for a single, double or other track, railroad and telegraph line, and for depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, superstructures, erections and fixtures, being necessary for the use of said railroad or telegraph; and also all and singular the franchises now owned, possessed
5988 or acquired, or which shall be hereafter owned, possessed or acquired, by the said party of the first part for the purpose of building and operating said railroad and telegraph above specified and described; and also all the rails, depots, yards, engine-houses, car-houses, station-houses, warehouses, machine-shops, work-shops

and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired, by said party of the first part, necessary to said railroad and telegraph line, or the running and operating the same."

That subsequently and on or about the 12th day of March, 1868, the said The Union Pacific Railroad Company as thereto authorized by law and in pursuance of due corporate action, made and entered into an agreement or indenture supplemental to said mortgage of November 1st, 1865, with said Edwin D. Morgan and Oakes Ames, Trustees, dated the said 12th day of March, 1868, wherein and whereby the said The Union Pacific Railroad Company, for the consideration therein expressed, agreed with the said Edwin D. Morgan and Oakes Ames, Trustees, for the benefit of all who then were or should thereafter be holders of said First Mortgage Bonds, and to and with the successors of said Trustees in the trust created by said indenture of mortgage of November 1st, 1865, that the principal of all said First Mortgage Bonds, being one thousand dollars each, as well such as had then been issued as such as should thereafter be issued, should and would be paid by the said Railroad Company, whensoever they should respectively become payable according to the tenor thereof, in gold coin of the United States at par; that is to say, one thousand dollars of such coin for each of said bonds, and thereafter The Union
5989 Pacific Railroad Company or its successor Company, The Union Pacific Railway Company, caused to be stamped upon such of said First Mortgage Bonds, issued and secured by the said mortgage of November 1st, 1865, as were presented for that purpose, a provision to the effect that the same should be payable in United States Gold Coin.

14. That said Edwin D. Morgan and Oakes Ames duly accepted said mortgage of November 1st, 1865, and the trusts thereunder, and continued to be and act as the trustees thereof until their deaths, respectively. That on May 8th, 1873, the said Oakes Ames died, and on December 3d, 1873, Oliver Ames was duly appointed trustee in the place and stead of the said Oakes Ames; and the said Oliver Ames afterwards, to wit, on March 9th, 1877, died, and on June 1st, 1881, Frederick L. Ames was duly appointed trustee in the place and stead of the said Oliver Ames. That on February 14th, 1883, Edwin D. Morgan died, and on March 6th, 1883, F. Gordon Dexter, one of the aforesaid defendants, was duly appointed successor trustee in the place and stead of said Edwin D. Morgan. That on September 13th, 1893, Frederick L. Ames died, and on October 12th, 1893, Oliver Ames, 2d, one of the aforesaid defendants, was duly appointed trustee under said mortgage in the place and stead of said Frederick L. Ames. That each of the said trustees, original and successor, duly accepted the said mortgage and the trusts thereunder, and said F. Gordon Dexter and Oliver Ames, 2d, now are the trustees under said mortgage, and the said agreement of March 12th, 1868, supplemental thereto.

15. That the lien of the said First Mortgage of November 1st 1865, and of each of said Bridge Mortgages hereinbefore described, viz:

the mortgages to John Pierpont Morgan and Edwin F. Atkins,
5990 as Trustees, and to the Central Trust Company, as Trustee, respectively, is subject and subordinate to the right of the Government to have the preference, at all times, in the use, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the telegraph line and railroad embraced in said mortgage for the transmission of despatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon such railroad for the Government whenever required by any department thereof.

And each and all of said mortgages and liens are subordinate and inferior to the title of the American Loan and Trust Company shown by the Equipment Trust Indenture of the Union Pacific Railway Company to the American Loan and Trust Company, dated October 1st, 1887, to the extent and so far as the said Indenture affects the portion of the equipment therein embraced, which is hereinafter decreed to pertain to the mortgaged premises covered by the said First Mortgage, and to the extent of the purchase money indebtedness herein found to be outstanding as recited in said Equipment Trust Indenture, and upon payment of which by said Union Pacific Railway Company, its successors and assigns or some one for it, said last named Company or such successors or assigns will become and be the owner of full title and possessed in complete ownership of all the equipment described in said Equipment Trust Indenture: and that the amount of said indebtedness secured by said Equipment Trust Indenture was on the first day of April, 1897, the sum of $507,000.

That said First Mortgage of November 1st, 1865, is, with the
5991 exception of said Equipment Trust indenture and said Omaha Bridge Mortgages above mentioned, a valid and subsisting first mortgage and lien superior and paramount to any and every lien, estate, right, title, interest or claim of any person, party or corporation whomsoever, including the United States of America, upon all the railroad, telegraph, premises, rights, franchises, lands and property described in said mortgage, including the railroad, right of way, and railroad property of the Union Pacific Railway Company extending from the eastern terminus of the said The Union Pacific Railway on the east line of the said Railway Company's property between Twelfth Avenue and Thirteenth Avenue in Council Bluffs, Iowa, in a westerly direction to Twentieth Street in Omaha, Nebraska, including the railroad and railroad bridge across the Missouri River, and also extending from the initial point of construction of the Union Pacific Railroad near the northeast corner of and within section 10, Township 15, Range 13 east of the 6th principal meridian, to Omaha, Nebraska, thence in a southerly and westerly direction through the City of Omaha to Twentieth Street in said City of Omaha at a junction with that part of said railroad from Council Bluffs aforesaid, and extending thence in a westerly direction through the counties of Douglas, Sarpy, Dodge, Colfax, Platte,

Merrick, Hall, Buffalo, Dawson, Lincoln, Keith, Deuel, Cheyenne and Kimball in the State of Nebraska, and Sedgwick County in the State of Colorado, and the Counties of Laramie, Albany, Carbon, Sweetwater, and Uintah, in the State of Wyoming, and the Counties of Summit, Morgan, Davis and Weber in the State of Utah, to a junction with the Central Pacific Railroad at a point five miles
5992 west of Ogden in the State of Utah, a distance of 1,042.41 miles of main line railroad; and also the rights of way, railroads and railroad tracks constituting spurs or branch lines of railroad extending from points of junction with the said main lines, (1) at a point about six-tenths of a mile west of what is known as Transfer Depot at Council Bluffs, in a northeasterly direction to what is known as the Broadway Depot in said city, a distance of 1.72 miles in the city of Council Bluffs; (2) at Almy Junction, Wyoming, in a northerly direction to a terminus at Mine No. Seven, a distance of 3.88 miles; (3) at Cheyenne, Wyoming, in a northwesterly direction to a connection with the track of the Union Pacific, Denver & Gulf Railway, a distance of 2.04 miles; (4) at a point on said main line in Omaha, Nebraska, northerly and easterly, a distance of 18,000 feet to certain ice-houses and industries on what is known as Cut-off Lake; also lots, yards, terminal grounds, shop grounds, streets and alleys, lands and tracts of land, tenements and hereditaments, easements, and rights of way owned or acquired or appropriated by or for the Union Pacific Railroad Company, the Union Pacific Railway Company or the said Receivers for the purposes of said lines of railroad, including all lands so acquired or appropriated the title to which stands in the names of trustees for said The Union Pacific Railway Company; and also all lands acquired for or used for stations or for terminal purposes, and also all rights and estates, legal and equitable, of the Union Pacific Railway Company, in and to all stations, depots, and in and to all union depots upon or connected with the line of its railway or used in connection therewith; and including all the lands and other
5993 property designated in the said report of the Special Master and in the schedules therein embraced, numbered 1, 2, 3, 4 and 5 of said property, being property owned, acquired and appropriated and necessary to the use and operation of the said railroad; also the shops, freight depots, general office building, round houses, depots, engine houses, car houses, station houses, machine shops, work shops, rails, switches, turnouts, spurs, side tracks, sidings and other structures and facilities upon said mortgaged premises, constructed, acquired or owned for the purposes of or in connection with said lines of railway; also the lands, interests and easements in lands, pipes, pump-houses, structures, pipe lines, appliances, facilities and easements of said company pertaining to the water supply upon or along said lines of railroad, and the tools, appliances, fixtures, materials and supplies owned or acquired for the purposes thereof; also the locomotives, passenger cars, Pullman sleeping cars, dining cars,

freight cars, and other cars and all other equipment and rolling stock, owned by the Union Pacific Railway Company and all interest of said The Union Pacific Railway Company in any other equipment or rolling stock, to the extent that said equipment and rolling stock so owned, or in which the said railway company has any interest, was acquired or provided for or by said railway company for the purposes of said railroad and mortgaged premises or is necessary for the running and operation thereof, the same being the undivided seventy per cent. of all the rolling stock or equipment owned by the Union Pacific Railway Company or in which said company has any interest; also all the lines of telegraph, telegraph material, instruments, fixtures and appliances belonging to the said railway company and located upon or used in connection with said mort-
5994 gaged premises; also all furniture, fixtures, appliances, apparatus, supplies and material owned, acquired or provided by said company for use in connection with said railroad and mortgaged premises, located in the various offices of said railway company upon or remote from said railroad, including the offices of said company in the cities of Omaha, Nebraska, and Boston, Massachusetts, and also all the property of said The Union Pacific Railway Company and all its rights and interests in and to property of every kind and nature, whether of the character herein described or otherwise, and the corporate rights and franchises of said The Union Pacific Railroad Company or its successor The Union Pacific Railway Company, so far as property, rights, interests and franchises pertain to the said railroad, telegraph and mortgaged premises; also all the moneys, credits, and property not herein otherwise specified, in the possession of or under the control of the said Receivers, or to which said Receivers are or may be entitled, which have been or may be derived by said Receivers from or on account of said mortgaged premises, or from the sale or other disposition of any of said property or from the operation of the said mortgaged premises by said Receivers, subject to the charges of the Receivers in respect thereof.

16. That the defendant The Union Pacific Railway Company made default in the payment of all of the interest, and of the coupons representing such interest which became due upon its said First Mortgage Bonds on the first day of July, 1894, although payment of interest due on that date was duly demanded by holders of said bonds, and said default continued in whole until the 27th day of November,
5995 1894, when an amount equal to the face of the interest coupons matured July 1st, 1894, was paid to the holders thereof, but no interest then accrued upon said coupons was paid, although payment of such accrued interest was demanded, and all of the interest upon said defaulted coupons matured on the first day of July, 1894, remains unpaid, together with interest thereon from the said 27th day of November, 1894. And the said The Union Pacific Railway Company made default in the payment of each subsequent semi-annual installment of interest which fell due upon said Bonds at the times of the maturity thereof, respectively, although payment of each of said

installments was duly demanded; but said semi-annual installments of interest were, under orders of this Court, paid by the defendant Receivers, together with interest upon such installments as follows: the installment due on the 1st day of January, 1895, was paid by the said Receivers on the 20th day of January, 1896; the installment due on the 1st day of July, 1895, was paid by the said Receivers on the 8th day of May, 1896; the installment due on the 1st day of January, 1896, was paid by the said Receivers on the 25th day of September, 1896; the installment due on the 1st day of July, 1896, was paid by the said Receivers on the 19th day of November, 1896, and the installment due on the 1st day of January, 1897, was paid by the said Receivers on the 2d day of March, 1897, and the installment due on the 1st day of July, 1897, was paid by the said Receivers on the 26th day of July, 1897.

That of the said bonds secured by said first mortgage of November 1st, 1865, six thousand four hundred and seventy-five (6,475), in the principal amount of six million four hundred and seventy-five
5996 thousand dollars ($6,475,000), became due and payable on the first day of January, 1896, and payment thereof was duly demanded; and that of said bonds one thousand five hundred and ninety-eight (1,598), in the principal amount of one million five hundred and ninety-eight thousand dollars ($1,598,000), became due and payable on the first day of January, 1897, and payment thereof was duly demanded; and that of said bonds one thousand nine hundred and twenty (1,920), in the principal amount of one million nine hundred and twenty thousand dollars ($1,920,000) became due and payable on the first day of July, 1897.

That the said The Union Pacific Railway Company made default in the payment of the said principal amounts of said bonds which matured on the first day of January, 1896, and on the first day of January, 1897, and on the first day of July, 1897, as aforesaid; and that the same remain due and unpaid, and the following amounts are now due and payable at the date of this decree for unpaid interest on the said coupons which matured July 1st, 1894, and for principal of said outstanding First Mortgage bonds already matured, viz:

For unpaid interest on coupons of July 1, 1894	$19,877.17
For principal of bonds matured July 1, 1897	9,963,000.00

That certain coupons pertaining to some of said First Mortgage bonds have never been presented for payment and remain unpaid, and certain semi-annual accrued interest upon said first mortgage bonds now matured has never been demanded or collected by the holders thereof, and such unpresented and unpaid coupons and such unpaid interest upon said unpresented matured bonds amounts to the
5997 sum of $102,930.

That the First Mortgage aforesaid is, subject to the title of The American Loan & Trust Company to the equipment aforesaid, and to the lien of Bridge Mortgages aforesaid, viz, to John Pierpont Morgan and Edwin F. Atkins as Trustees and to the lien of the Central Trust Company as Trustee, respectively, the first and best

lien upon the premises embraced in said mortgage, including the said bridge and approaches and seventy per cent. of the equipment of the Union Pacific Railway Company as herein described, subject only to the exception of a preferential right in favor of the United States to transportation at reasonable rates, as more fully recited elsewhere herein; and the Court further finds that the mortgage and lien of the United States of America in favor of said Subsidy Bonds is the next best lien to the lien of said First Mortgage on all the property embraced therein and ranks in order of incumbrance next after the same.

17. That on the 21st day of January, 1895, the said F. Gordon Dexter and Oliver Ames, Second, as Trustees, filed their bill of complaint in the Circuit Court of the United States for the District of Nebraska, wherein they set up and allege the existence and obligation of the First Mortgage aforesaid, and the defaults aforesaid existing at that time in the non-payment of interest and principal of said mortgage bonds, and prayed for the foreclosure of said mortgage; for the appointment of Receivers of the Union Pacific Railway from Council Bluffs, Iowa, to a point five miles west of Ogden, Utah, together with its branches, equipment and franchises, and for the sale thereof, and the application of the proceeds of such sale to the
5998 payment of said bonds and interest. They also alleged that said railway company was insolvent, and was in the possession of Receivers appointed by said Court in a certain suit brought in October, 1893, by said Oliver Ames, Second, and Samuel Carr, Executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edwin F. Atkins, complainants, against the Union Pacific Railway Company and others, and in said suit first-named, brought by said Dexter and Ames, as Trustees, such proceedings were had that on the said 21st day of January, 1895, said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert were appointed Receivers of all and singular the Railway property and Equipment of said Union Pacific Railway Company between Council Bluffs and a point five miles west of Ogden, as described and embraced in said First Mortgage of November 1, 1865, and were ordered and directed to operate and manage the same so as to secure the best results therefrom for the protection of, and payment of the debts due to, the holders of said First Mortgage bonds, and said Receivers qualified and took possession of said railway and property including said equipment, and have maintained and operated the same under the direction of this Court, from that time until the present, and are now in the possession thereof, and engaged in maintaining and operating the same under orders of this Court for the purposes aforesaid; and that the possession and title of said Receivers is superior in right to any claim of the United States of America, complainants, upon their Subsidy lien bonds as asserted in their said Bill of Complaint, and also to the Sinking Fund Mortgage hereinafter described, and the rights of the trustee thereunder and of the holders of bonds secured thereby,

5999 but is junior and subject to the preferential right of the United States for the transmission of despatches and transportation of mails, troops and munitions of war, supplies and public stores, at reasonable rates, as in this decree found, and is also subject and junior to the title of the American Loan & Trust Company under said Equipment Trust Indenture, and is also junior and subordinate, so far as the line between Council Bluffs and Bridge Junction in Omaha is concerned, and so far as the bridge across the Missouri River between Council Bluffs and Omaha is concerned, to the lien of the Omaha Bridge Mortgages, viz., those held by J. Pierpont Morgan and Edwin F. Atkins, as Trustees, as aforesaid, and that held by the Central Trust Company of New York, as Trustee, aforesaid, and to the liens and claims of the holders of bonds secured thereby.

18. That the Union Pacific Railroad Company under and in pursuance of the power and authority conferred upon it by the Acts of Congress aforesaid, and for the purpose of paying certain outstanding land grant mortgage and income bonds, made, executed and delivered its mortgage indenture known as its Sinking Fund Mortgage, dated on the 18th day of December, 1873, to The Union Trust Company of New York, Trustee, wherein and whereby, for the purpose aforesaid and for the purpose of securing the payment of the principal and interest of the coupon bonds of said company amounting to the sum of sixteen million dollars in gold coin of the United States, or three million two hundred thousand pounds British Sterling money, said coupon bonds being in number 16,000 and for the sum of one thousand dollars gold coin of the United States, or two hundred pounds English Sterling money, numbered from 1 to 16,000, inclusive, the principal being payable on the 1st day of

6000 September, 1893, in gold coin, unless sooner redeemed, with interest at the rate of eight per cent. per annum current money of the United States, or seven per cent. British Sterling money, at the option of the holder, payable on the 1st day of March and the 1st day of September in each year, the said Union Pacific Railroad Company granted, bargained, sold, released, conveyed and confirmed to The Union Trust Company and its successor as trustee, all the right, title, estate and interest of the said Railroad Company of, in and to its railroad, extending from the City of Omaha, in the State of Nebraska, to a point about five miles west of the City of Ogden, in the Territory of Utah, and its appurtenances, together with all its lands, tenements, hereditaments, rights of way and easements acquired or owned, or which should be thereafter acquired or owned, for the purpose of a right of way for a single, double or other track, railroad, and for depots, engine houses, car houses, station houses, warehouses, machine shops, superstructures, erections, fixtures and appurtenances and property necessary or convenient for the use of said railroad; also all the rails, depots, yards, engine houses, car houses, warehouses, round houses, machine shops, work shops and other structures and fixtures of the said party of the first part, and also all goods and chattels then owned, or which should thereafter be owned

or acquired by said party of the first part, necessary or convenient to said railroad, or the running and operation of the same, or used or employed therein, or in connection therewith, subject, however, to said conveyance in trust and mortgage so made to the said Morgan and Atkins, and also to the said Subsidy lien or mortgage of the United States: also all and singular the lands granted to said
6001 Railroad Company by the said Acts of Congress, and also all the estate, right, title, interest, claim and demand, whatsoever, at law or in equity, of, in or to the same, or any part or parcel thereof, which the said Railroad Company then held, owned or was entitled to, or thereafter might or should acquire, have, hold, own, or be or become entitled to by force or virtue of said Acts of Congress, saving and excepting all parts and parcels of said lands which should have been, previous to the execution of this said mortgage, conveyed or contracted to be conveyed by said Railroad Company to purchasers thereof.

That under the terms and provisions of said Sinking Fund Mortgage and in accordance therewith said Railroad Company issued its bonds secured thereby in the total amount of $16,000,000, which bonds were duly certified by said trustee and were sold by said Railroad Company and the proceeds derived from such sale were by it applied according to the terms and provisions of said mortgage.

That there had been, on August 9th, 1893, paid and canceled of said bonds so issued under said mortgage, $11,838,000 of the principal thereof, together with the interest thereon, and on said last-mentioned date said Railway Company entered into an agreement with said Union Trust Company of New York, as Trustee, providing for the extension of the time of payment of said bonds then remaining unpaid until the first day of September, 1899. That there are now outstanding of said bonds secured by said mortgage of December 18th, 1873, 3,738 bonds, and that said company is in default in the payment of the interest on said bonds which matured on the first day of September, 1896, and in the payment of each and every
6002 installment of interest on said bonds thereafter matured, and that the amount of the outstanding principal of said bonds and of the matured interest thereon is as follows:

Principal of said Sinking Fund Bonds outstanding	$3,738,000
Unpaid coupons thereon at their face	298,400

That said sinking-fund mortgage is, to the extent that it includes any railroad property and franchises embraced in said First Mortgage of November 1, 1865, a lien subject and inferior and subordinate and next in order of incumbrance, to the Subsidy Lien of the United States, and said Sinking Fund Mortgage is a first and paramount lien upon all the lands and land grant therein described and thereby conveyed.

And the Court hereby reserves for other or further proceedings and decree all rights and equities of the trustee of the said Sinking Fund Mortgage and of the holders of bonds secured thereby, not herein

determined or adjudged and not barred or foreclosed by the sale hereinafter provided to be made.

19. That in addition to the sums hereinbefore found to be due from and owing by said defendant Railway Company, said Company is indebted in large sums, of which the payment is overdue, and it has made default in the payment thereof and is unable to pay the same and is wholly insolvent, and it is for the best interests of all concerned that the said railroad, telegraph and equipment, with the properties and franchises, rights, functions, immunities and appurtenances of the said railway company embraced in and covered by the Subsidy Mortgage and lien of the complainants, should be sold and that provision be made for the payment of the indebtedness of said railway company according to the respective liens
6003 and equities of the holders thereof. That the railroad, telegraph, appurtenances, rolling stock, equipment, and other property and franchises, rights, functions, immunities, and appurtenances of said defendant Railway Company embraced in said Subsidy Mortgage and lien in favor of the United States are indivisible and so situated and are of such a nature that the same cannot be sold in parcels without great injury to all the parties in interest and that it is expedient that the same shall be sold as an entirety, as hereinafter provided, subject to the rights of all prior mortgagees and incumbrancers and said Receivers, hereinbefore described, but free and clear and discharged from all the aforesaid junior and subordinate claims and rights of the trustee and bondholders under said Sinking Fund Mortgage, and all other claims and rights, junior and subordinate to those of the United States Subsidy Mortgage and lien.

20. *It is therefore further ordered, adjudged and decreed* that the defendant The Union Pacific Railway Company pay, or cause to be paid, within twenty days after the entry of this Decree, into the Treasury of the United States of America, the amount on the 1st day of April, 1897, due and owing for principal and interest of said Subsidy lien bonds, namely, the sum of $18,487,629.18.

21. *It is further ordered, adjudged and decreed*, that in default of such payment by the defendant the said The Union Pacific Railway Company, or by some one claiming under it, or for its account, or by some of the defendants herein, within the time aforesaid, all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also
6004 the estate and property of every kind and description embraced in and covered by said Subsidy Mortgage and lien to the United States, and all securities in the said United States Union Pacific Sinking Fund shall be sold as hereinafter directed, and all the right, title, estate, interest and equity of redemption of the said defendant The Union Pacific Railway Company and of all persons claiming, or to claim under it, and of all the parties to this cause, except the prior incumbrancers and title and lien holders hereinbefore described, viz., those claiming under the American Loan & Trust Company Equipment Indenture, and under the said Omaha Bridge

Mortgages to said John Pierpont Morgan and Edwin F. Atkins, as trustees, and the Central Trust Company of New York, as trustee, respectively, and those claiming under the First Mortgage of November 1, 1865, including the Receivers appointed thereunder, of, in or to the said railroad, telegraph, franchises, rolling stock, and property, and every part and parcel thereof, embraced in said Subsidy lien and mortgage, and all the right, estate, interest and equity of redemption of all and each of the parties to this cause of, in or to the securities in the said Sinking Fund and in and to every part and parcel thereof, shall be forever absolutely barred and foreclosed, saving only the rights herein expressly excepted and reserved.

The said property, covered by and embraced in said Subsidy Mortgage and lien, as the same is herein described and defined, shall be sold upon the conditions and in the manner hereinafter provided and directed, at public auction to the highest bidder or bidders upon the mortgaged premises, at the freight station of The Union Pacific Railway Company in the City of Omaha in the State of Nebraska
6005 on a day or days to be fixed by the Special Master hereinafter appointed and public notice of such sale and the time and place thereof, together with the manner and the terms upon which the said sale is to be conducted, shall be given by the said Special Master by advertisement, which shall describe briefly the property to be sold, the time and place when and where the sale is to take place, and the conditions upon which it is to be conducted; which advertisement shall be published at least once a week for the term of four successive weeks preceding the day of sale, in at least one newspaper in each of the following cities,—namely, New York City, New York; Boston, Massachusetts; Omaha, Nebraska; Denver, Colorado; Cheyenne, Wyoming, and Salt Lake City, Utah.

22. Said sale shall be made in the following manner and upon the following terms:

Said property shall be sold as an entirety and in one parcel.

The Special Master shall have the power and right to postpone the said sale from time to time, and may, without further notice, proceed with the said sale on any day to which the sale may have been adjourned, and may, at his option, give such further notice of sale, in addition to the notice above described, as he may think proper.

The Special Master shall receive no bid from any one offering to bid who shall not have deposited with him, at his office in Omaha, Nebraska, at least five days before the date of the sale mentioned in the Special Master's published notice, as a pledge that he will make good his bid in case of its acceptance, the sum of two million dollars ($2,000,000) in cash.

The Special Master shall accept no bid for said railroad, franchises and property less than the sum of $23,000,000 in cash,
6006 and unless such sum shall be bid, the Special Master may adjourn the sale and apply to the Court for further instructions.

Upon the acceptance of any bid, the person or persons making the

3597

same shall forthwith deposit with the Special Master, on account thereof, a further sum in cash, which together with the amount which he or they have already deposited as a pledge shall equal fifteen per cent. (15%) of the accepted bid.

In case any bidder shall fail to make good his bid upon its acceptance by the Special Master by making within five days after such acceptance the additional deposit with the Master as hereinbefore provided, or, after the confirmation of said sale, shall fail to pay, as hereinafter provided, the balance due upon his said bid in consummation of his purchase, then the sums in cash so deposited by such bidder or purchaser, as hereinbefore provided, shall be forfeited as a penalty for such failure, and shall be applied towards payment of the expenses of a resale and towards making good any deficiency or loss in case the property shall be sold at a less price upon such resale, and to any other and further purposes which the Court may direct.

Any party to this cause or any holder or holders of First Mortgage bonds may bid and purchase at such sale.

If any sale for which a deposit has been made shall not be confirmed by the Court, such deposit shall be returned to the bidder, and the deposit of any unsuccessful bidder shall be returned to him when a bid has been accepted.

23. The purchaser whose bid shall have been accepted by the Special Master at said sale shall make payments in cash of the sum remaining due upon his said bid after the application thereto of the
6007 amounts theretofore deposited by him, as follows:

Twenty-five (25%) per cent of said amount so remaining due on said bid shall be paid within thirty days after the confirmation of the sale; a further twenty-five (25%) per cent of said amount shall be paid within forty days after such confirmation; a further twenty-five (25%) per cent of said amount shall be paid within fifty days after such confirmation; and a further twenty-five (25%) per cent of said amount shall be paid within sixty days after such confirmation: *Provided, however*, that the purchaser shall have the right to anticipate any or all of said payments by making the same, or any of them, at an earlier time, or earlier times, than herein fixed. The Master may accept a certified check upon, or a certificate of deposit of any National bank or trust company which is satisfactory to him, as a payment or a deposit of cash instead of money, in any case in which he is by the terms of this decree required to obtain cash.

The proceeds of the accepted bid shall be applied to the payment of the amount owing to the United States, whether due or not, secured by its said Subsidy mortgage and lien, until said Subsidy debt shall be paid in full, and the surplus, if any, shall be distributed by subsequent orders of the Court. After the sale hereunder has been confirmed, the purchaser may pay the unpaid balance of his bid to the Master or to the United States, and the receipt of the Secretary of the Treasury or his proper subordinate, for any part of such balance,

shall be sufficient evidence of its payment, and after such confirmation the Master may pay to the United States any portion of the purchase price in his hands which is applicable to the payment of
6008 the Subsidy lien and may take a like receipt therefor.

24. Upon the confirmation of such sale and conveyance of the premises sold, the purchaser or purchasers, his or their successors and assigns, shall, subject to the possession and rights of said Receivers and subject to the liens and rights of the prior mortgagees and incumbrancers hereinbefore mentioned, hold and enjoy the same and all the rights, privileges, immunities and franchises thereto appertaining. The purchaser or purchasers, and his or their successors and assigns, shall, subject to the possession and rights of said Receivers, and subject to the liens and rights of the prior mortgagees and incumbrancers hereinbefore mentioned, thereupon be entitled to have and to hold the said premises so conveyed by a full, absolute and indefeasible title, freed and discharged from all the mortgages, liens, claims and charges of the Complainants herein and of each and every defendant herein, and of all the parties to this cause, saving and excepting the right of the United States Government to have the preference, at all times, in the use at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the said telegraph line and railroad for the transmission of despatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the Government whenever required by any Department thereof.

25. The defendant The Union Pacific Railway Company shall at the time of the execution of the said deed by said Special Master, as a further assurance to the purchaser or purchasers, execute its deed, or join with said Special Master in the execution of the deed
6009 to be made by him, and shall thereby convey and release to the purchaser or purchasers and his or their successors or assigns, all its right, title and interest in and to the property conveyed by said Special Master to the said purchaser or purchasers. And said Railway Company shall also execute and deliver to said purchaser or purchasers, or to his or their assigns, and shall unite in the execution and delivery of such further, separate and specific deeds and conveyances of lands, lots or other property, of which the title shall be held by or for it, described in the Master's report, hereby confirmed, as shall be by said Special Master approved as necessary or proper to complete or assure the title of the purchaser or to complete or facilitate the record evidence thereof.

26. The purchaser or purchasers, or his or their successors and assigns, shall, as part consideration and purchase price of the property purchased, and in addition to the sums heretofore required to be paid, take the same and receive the deed therefor upon the express condition that he or they, or his or their successors or assigns shall pay, satisfy and discharge—

First. All the proper costs of this cause and of the expenses of the sale hereunder, including the compensation and necessary expenses of the Special Master appointed to make the sale.

Second. The charges, compensation, allowances, and disbursements of the Complainants and any of the other parties to this cause, entitled thereto, their solicitors and counsel.

The costs, compensation, allowances, and disbursements specified in this article shall be paid by the purchasers when they are fixed by the Court. The purchaser, his successors or assigns, shall pay any
6010 of the claims described in this order when by it required, or shall pay to the Special Master or into Court the moneys required to discharge the same from time to time, as the Court may direct. And this Court reserves the right and retains the power and jurisdiction to take back and resell the said property in case the purchaser, his successors or assigns, fail to pay any of said claims, when by it required, and in case he or they fail to pay any other part of the purchase price of this property.

27. It is further Ordered, Adjudged and Decreed, that upon payment of the purchase price by the purchaser or purchasers of said property, the said Special Master making the sale shall execute and deliver a good and sufficient deed conveying all the said railroad, telegraph, rolling stock, and property of every kind and description herein ordered to be sold subject to the prior liens and exceptions hereinbefore found, together with all the franchises, rights, functions, immunities, and appurtenances belonging to the said premises, to such purchaser or purchasers, or his or their successors and assigns.

From the time when by the order of this Court the said Receivers deliver the possession of the said premises and property to such purchaser, his or their successors and assigns, he or they shall have, receive, hold, and enjoy all the earnings, income, and proceeds of the operation, use, or disposition thereof, and all compensation for the transmission of despatches over said telegraph line and the transportation of any persons or property over said railroad for any persons, party, or corporation including the Government of the United States.

28. The bonds held in the United States Union Pacific Sinking Fund shall be sold as an entirety and in one parcel to the
6011 highest bidder or bidders.

The Special Master shall have the power and right to postpone the sale of said Sinking Fund bonds from time to time and may, without further notice, proceed with the sale on any day to which the same may have been adjourned, and may at his option give such further notice of sale in addition to the public notice above described as he may think proper.

The Special Master shall receive no bid from any bidder for the securities in said Sinking Fund, who shall not have paid the said Special Master, at his office in the city of Omaha, Nebraska, at least five days before the date announced for said sale, the sum of at least ten per cent. of the aggregate par value of all the bonds in the said

Sinking Fund as herein found, namely, the sum of $1,364,525, as a pledge that he will make good his bid in case of its acceptance.

The said Special Master shall accept no bid for said Sinking Fund bonds less than a sum equal to the aggregate par value of all of the bonds in said Sinking Fund as herein found as of the date of April 30th, 1897, namely, the sum of $13,645,250.89, and, unless such sum shall be bid, the Special Master may adjourn the sale and apply to the Court for further instructions.

The purchaser shall, within fifteen days after the confirmation of the said sale by the Court of the said Sinking Fund bonds, make such further payment or payments in cash as shall be necessary to complete, with the deposit theretofore made by him, the payment of the sum bid by him at such sale, and such payment shall be made into the Treasury of the United States, or to such official of the Treas-
6012 ury Department of the United States or depositary as shall be by the Secretary of the Treasury designated to receive such payment on behalf of the United States; provided, however, that simultaneously with such payment, and as a condition thereof, the said purchaser shall be entitled to receive and shall receive from the Secretary of the Treasury of the United States and said Secretary of the Treasury shall at the time of such payment as aforesaid deliver to such purchaser all the bonds in the said United States Union Pacific Sinking Fund, duly endorsed by the Secretary of the Treasury so as to effectually transfer the same and make the same good in the hands of other holders than the said Secretary. And thereupon the cash held in the said United States Union Pacific Sinking Fund shall be applied and credited in payment of the Subsidy debt of the said Union Pacific Railway Company to the United States, secured by said Subsidy lien, whether such indebtedness shall be then matured or not, and the said Secretary of the Treasury shall be entitled to so credit, and shall so credit the same.

The Special Master shall hold any sum deposited with him as a pledge to secure any bid which shall have been accepted, subject to the order of the Secretary of the Treasury of the United States at any time when the balance of such bid shall have been paid and the delivery of the said bonds to the purchaser shall have been made as hereinbefore provided, or subject to the requirement of the purchaser made at any time within fifteen days after the confirmation of the said sale that the amount so deposited shall be paid over by the said Special Master into the Treasury of the United States, or to such official of the Treasury Department or depositary as may be designated by the said Secretary of the Treasury to receive such payment.

6013 The Master may accept a certified check upon or a certificate of deposit of any National bank or trust company which is satisfactory to him, as a payment or a deposit of cash instead of money, in any case in which he is by the terms of this decree required to obtain cash.

If any surplus over the said Subsidy debt of the Union Pacific Railway Company to the United States shall result from the proceeds of the sale of the railroad and other property embraced in said Subsidy mortgage and lien and from the sale of the bonds held in the United States Union Pacific Sinking Fund, after the application of the cash in said Sinking Fund to said Subsidy indebtedness, then such surplus shall be paid into Court, and any party hereto may apply to the Court for further direction in respect thereto.

In case any bidder or purchaser shall fail, within fifteen days after confirmation of the said sale of said Sinking Fund Bonds, to pay, as hereinbefore provided, the balance due upon his bid in consummation of his purchase, then the sum deposited by such purchaser shall be forfeited as a penalty for such failure, and shall be applied towards the payment of the expenses of a resale, and towards making good any deficiency or loss in case the same shall produce a less price upon such resale, and to any other and further purpose which the Court may direct.

If any sale for which a deposit has been made shall not be confirmed by the Court, such deposit shall be returned to the bidder, and the deposit of any unsuccessful bidder shall be returned to him when a bid has been accepted.

29. It is further Ordered, Adjudged and Decreed That
6014 William D. Cornish be, and he is hereby, appointed Special Master to execute this Decree and make the sales herein provided to be made, and to execute and deliver the deeds of conveyance of the property sold to the purchaser or purchasers thereof upon confirmation of said sales and payment of the purchase prices thereof, as herein provided, and this Court reserves the right at any time to appoint another Master with the same powers as the one herein appointed, in case of the inability for any reason of the Special Master herein appointed to act or perform the duties of his office or in reference to his office. As soon as any sales have been made by such Special Master in pursuance of this Decree, he shall report the same to this Court for confirmation, and shall from time to time thereafter make such further and supplemental reports as shall be necessary to keep the Court and the parties to this cause properly advised of his proceedings in the execution of this Decree.

30. It is further Ordered, Adjudged and Decreed, that all the rights of the complainants, United States, not disposed of by this decree are hereby reserved to them, and that all questions not hereby disposed of, including the discharge of the Receivers and the statement and settlement of their accounts, are hereby reserved by this Court for its future adjudication; and that any party to this cause may at any time apply to this Court at the foot of this Decree for further relief in respect to matters not herein specifically provided for.

WALTER H. SANBORN,
U. S. Circuit Judge, Eighth Judicial District.

6015 Mr. LOVETT. It is stipulated that ancillary bills of complaint on behalf of the United States of America, in the same suit, were filed, and ancillary decrees of foreclosure, in substantially the form of Defendants' Exhibit 16–A, were rendered on the 29th and 30th days of July, 1897, in the Circuit Courts of the United States for the Southern District of Iowa, the District of Colorado, the District of Wyoming, and the District of Utah.

It is further stipulated, that, pursuant to the decrees of foreclosure in favor of the United States of America, Defendants' Exhibit 17, the Special Master sold all the property covered thereby, on the 1st day of November, 1897, to Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, for $39,883,281.67, and the Special Master making said sale duly reported the same to the court.

I now offer in evidence Defendants' Exhibit 18, being copy of the decree confirming said sale.

It is stipulated that the copy offered may be used in place and stead of the original, subject to correction.

Defendants' Exhibit 18 is as follows:

DEFENDANTS' EXHIBIT 18.

Circuit Court of the United States for the District of Nebraska.

UNITED STATES OF AMERICA, COMPLAINANT,
against
THE UNION PACIFIC RAILWAY COMPANY, ET. AL., defendants.

6016 *Order confirming special master's first report of sale.*

Upon motion of Louis Fitzgerald and Alvin W. Krech as purchasing trustees, appearing by Winslow S. Pierce, their solicitor, and the defendants Morgan and Atkins consenting by stipulation filed herein, and the complainants and each and every other defendant by their counsel, respectively, consenting in open court, and the court being duly advised in the premises, it is

Ordered that the Special Master's report of sale filed herein on November 2nd, 1897, be and it is in all things ratified, approved and confirmed, and the said sales therein reported are hereby made absolute, subject however, to all the terms and conditions of the said decree and to the due performance by the purchasers or their successors or assigns of all the obligations therein prescribed.

It is further ordered that the amount in the aggregate of the payments made and to be made to and for account of the United States by the petitioners, their successors or assigns, for the railroad property and franchises (exclusive of the Sinking Fund securities) purchased by the petitioners, shall be the sum of $40,253,605.49, provided, however, that the amount of government earnings, for services rendered to the government, earned and received or retained by the

United States up to November 1st 1897, applicable to the subsidy debt of The Union Pacific Railroad Company and not yet credited by the United States upon such debt, or stated in its accounts, shall be applied and credited on account of the above mentioned sum to be paid by the purchasers, their successors or assigns, and in partial
6017 satisfaction and payment thereof.

WALTER H. SANBORN, *Circuit Judge.*

Dated November 6, 1897.

We consent to the entry of the foregoing order.

Dated November 6, 1897.

THE UNITED STATES OF AMERICA,
By JOHN C. COWIN,
Special Counsel.
LOUIS FITZGERALD and ALVIN W. KRECH,
Purchasing Trustees.
By WINSLOW S. PIERCE,
Their Solicitor.

Mr. LOVETT. I now offer in evidence Defendants' Exhibit 19, being copy of the assignment by Louis Fitzgerald and Alvin W. Krech of their bid under the decree of foreclosure in favor of the United States, above set forth, except the bonds in the United States-Union Pacific Sinking Fund, bought by them at such foreclosure sale.

It is stipulated that the copy offered may be used in place and stead of the original, subject to correction.

Defendants' Exhibit 19 is as follows:

DEFENDANTS' EXHIBIT 19.

ASSIGNMENT OF BID.

Know all Men by these Presents, That

Whereas, in a certain cause pending in the Circuit Court of
6018 the United States for the District of Nebraska, in which the United States of America are complainants and The Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers; F. Gordon Dexter and Oliver Ames, Trustees; Union Trust Company of New York, Trustee; J. Pierpont Morgan and Edwin F. Atkins, Trustees, and the Central Trust Company of New York, Trustee, are defendants, a certain decree of foreclosure and sale was entered by the said Court on the 29th day of July, 1897; and

Whereas, in certain causes ancillary thereto and pending between the same parties in the Circuit Courts of the United States for the Districts of Colorado, Wyoming, Utah and the Southern District of Iowa, certain decrees were entered by said Courts on the following dates respectively—to wit, in the Circuit Court of the United States for the Southern District of Iowa, on the 29th day of July, 1897; in the Circuit Court of the United States, for the District of Colorado,

on the 31st day of July, 1897; in the Circuit Court of the United States, for the District of Wyoming, on the 31st day of July, 1897; and in the Circuit Court of the United States, for the District of Utah, on the 2d day of August, 1897; by each of which said decrees it was, among other things, adjudged and decreed that the decree rendered in said cause by the United States Circuit Court, for the District of Nebraska, be rendered and pronounced as the decree of the said Courts respectively in said ancillary causes and should be executed upon the terms and conditions therein prescribed and that the execution of said decree rendered by said Circuit Court of the United States, for the District of Nebraska, according to its
6019 terms and conditions should be deemed and held to be the execution of the decrees of the said Courts in said ancillary causes in all respects whatsoever; and

Whereas, by said decree it was, among other things, adjudged and decreed that the said The Union Pacific Railway Company pay, or cause to be paid, within twenty days after the entry of said decrees into the Treasury of the United States of America the amount in said decrees found to be due and owing to said United States of America, and that in default of such payment within said time all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description embraced in and covered by the Subsidy Mortgage and Lien of the United States should be sold, as in said decrees directed, as an entirety and in one parcel by William D. Cornish, the Special Master, appointed by said decrees, at public auction, to the highest bidder or bidders upon the mortgaged premises, at the freight station of The Union Pacific Railway Company in the City of Omaha, in the State of Nebraska, on a day or days to be fixed by the said Special Master, after giving notice of said sale as in said decrees specified; and

Whereas, neither the said The Union Pacific Railway Company, nor any one for its account, nor any defendant in any of the said causes above mentioned made payment of the sum decreed as aforesaid or any part thereof within the time aforesaid, or at any other time; and

Whereas, the said Special Master in pursuance of said decrees, due notice having been given as therein prescribed and
6020 according to law, did duly sell at public auction upon the mortgaged premises at the freight station of The Union Pacific Railway Company in the City of Omaha in the State of Nebraska, on the 1st day of November, 1897, all and singular all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description embraced in and covered by the said Subsidy Mortgage and Lien of the United States (being all the premises, railroad and property of every kind and description mentioned in said decrees except the bonds in the United States-Union Pacific Sinking Fund) to Louis Fitzgerald and Alvin W.

Krech, Purchasing Trustees, for the sum of $39,883,281.67, said Louis Fitzgerald and Alvin W. Krech being the highest and best bidders for said property at said sale, and having duly and seasonably qualified as bidders at said sale as required by said decrees in that behalf; and

Whereas, the said Special Master did duly make and file his report of said sale in the said several courts; which said report and the sale therein reported have been, upon due notice, by orders of said several courts, duly confirmed; and

Whereas, the said Louis Fitzgerald and Alvin W. Krech, have in all respects to the date of these presents complied with the provisions of said decrees of foreclosure and sale and have completed the payment of the purchase price as required by said decrees and orders confirming said sale; and

Whereas, in said decrees it is among other things provided that upon payment of the purchase price by the purchaser or purchasers of said property the said Special Master appointed by
6021 said decrees shall execute and deliver a good and sufficient deed conveying all the said railroad, telegraph, rolling stock and property of every kind and description in said decrees ordered to be sold, subject to the prior liens and exceptions in said decrees found, together with all the franchises, rights, functions, immunities and appurtenances belonging to the said premises, to the purchasers or their successors and assigns; and

Whereas, the Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, is desirous of acquiring, and is authorized to acquire, the said bid or contract of purchase of said Louis Fitzgerald and Alvin W. Krech, and all their rights thereunder, including their right to receive a deed or deeds pursuant to the said decrees for the property, railroad and premises purchased by the said Louis Fitzgerald and Alvin W. Krech at the said sale; and the said Railroad Company has made, and has agreed to make, payment and provision for the payment for said property satisfactory to said Louis Fitzgerald and Alvin W. Krech, and has agreed to perform and assume all of the obligations required by said decrees and orders to be performed and assumed by said Louis Fitzgerald and Alvin W. Krech by reason of their said bid and purchase at said sale;

Now therefore these presents witness:

That the undersigned Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, in consideration of the premises, and of other good and valuable considerations, have sold, assigned, transferred and set over and hereby do sell, assign, transfer and set over unto said
6022 Union Pacific Railroad Company, its successors and assigns, their said bid and their right to receive conveyance of the said railroad, franchises and property so purchased by them and all their other rights under said decrees or by virtue of their said bid and purchase in and to said premises, being all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances

to the same belonging and also the estate and property of every kind and description embraced in and covered by the said Subsidy Mortgage and Lien of the United States (being all the premises, railroad and property of every kind and description mentioned in said decrees except the bonds in the United States-Union Pacific Sinking Fund);

To have and to hold the same unto the said Union Pacific Railroad Company, its successors and assigns, to its and their own use forever, subject, however, to all the conditions, restrictions and reservations in said decrees set forth and subject further, to the performance, in the manner set forth in said decrees, by the said Union Pacific Railroad Company of all the acts and things required by said decrees to be performed by the said purchasers at said sale and now remaining unperformed, and said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, do hereby direct and request that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers at said sale, or his or their successors or assigns, conveying and releasing said property as in said decrees provided, be made and delivered to said Union Pacific Railroad Company, its successors and assigns.

And these presents further witness that Union Pacific Rail-
6023 road Company hereby accepts the foregoing assignment, and covenants and agrees to pay, satisfy and discharge, and to indemnify and forever hold harmless said Louis Fitzgerald and Alvin W. Krech, their executors and administrators from and against any, and all losses, damages, expenses and liabilities whatsoever which may have been incurred, or hereafter may be incurred, by said Louis Fitzgerald and Alvin W. Krech or either of them by reason of their said bid and the acceptance thereof, or by reason of any acts and things required by said decrees or said orders confirming said sale to be performed by said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees.

Ten originals of this instrument have been executed, each of which shall be deemed an original and all collectively as one instrument.

In witness whereof, the undersigned, Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, have hereunto set their hands and affixed their seals, and Union Pacific Railroad Company has caused these presents to be executed by its President and its corporate seal to be hereto affixed, attested by its Secretary, this 17th day of January, 1898.

LOUIS FITZGERALD [SEAL]
ALVIN W. KRECH [SEAL]
Purchasing Trustees.

In the presence of:
G. V. TURNER.
WALTER S. WILSON.

UNION PACIFIC RAILROAD COMPANY,
[SEAL.] By HORACE G. BURT, *President.*
Attest:
ALEX. MILLAR,
Secretary.

6024 Mr. LOVETT. I now offer in evidence as Defendants' Exhibit 20, copy of the deed from William D. Cornish, Special Master, and others, to the Union Pacific Railroad Company, dated January 22, 1898, conveying all the property bought by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, at the sale above-mentioned in the decree in favor of the United States, except the bonds in the United States-Union Pacific Sinking Fund.

It is stipulated that the copy offered may be used in place and stead of the original, subject to correction.

Defendants' Exhibit 20 is as follows:

DEFENDANTS' EXHIBIT 20.

William D. Cornish, Special Master, and others, to Union Pacific Railroad Company.

DEED, UNDER DECREE FORECLOSING GOVERNMENT SUBSIDY LIEN ON THE UNION PACIFIC RAILROAD. DATED JANUARY 22, 1898.

Indenture, made the 22d day of January, A. D. 1898, between William D. Cornish, of St. Paul, Minnesota, as Special Master, appointed by the decrees entered in the causes hereinafter mentioned by the Circuit Courts of the United States for the District of Nebraska, the Southern District of Iowa, the District of Wyoming, the District of Colorado, and the District of Utah—party of the first part;

The Union Pacific Railway Company, a corporation formed 6025 by the consolidation of the Union Pacific Railroad Company, with the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company,—party of the second part;

Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, both of the City of New York,—parties of the third part; and

Union Pacific Railroad Company, being a new corporation or body politic and corporate organized and existing under and pursuant to the laws of the State of Utah,—party of the fourth part;

Whereas, The Union Pacific Railroad Company was duly incorporated and organized under and by virtue of an Act of the Congress of the United States, entitled "An Act to aid in the construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1, 1862; also, an Act of Congress amendatory thereof, approved July 2, 1864, and other Acts of the Congress of the United States amendatory thereof and supplemental thereto; and

Whereas, the said last-named company, under and pursuant to the legislation aforesaid, did construct a continuous line of railroad and telegraph extending from Council Bluffs, on the Iowa bank of the Missouri River, across said river and through the States of Nebraska, Wyoming and Colorado, into the State of Utah, to a connection with the railroad of the Central Pacific Railroad Company,

at a point about five miles West of the City of Ogden, in the State of Utah, a distance of 1,042.41 miles, more or less, of main line, including the bridge over the Missouri River between Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska; and

Whereas, the Union Pacific Railway Company, party hereto
6026 of the second part, was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several Acts of the Congress of the United States, by the consolidation of said The Union Pacific Railroad Company, and the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, and said The Union Pacific Railway Company, so created, became the successor to each and all of the said constituent Companies, and became vested with all the rights, titles, interests, lands and land grants, railroads, properties and franchises of each and all of the said constituent companies; and

Whereas, the United States of America, under and pursuant to the said Acts of Congress issued and delivered to said The Union Pacific Railroad Company bonds of the United States termed subsidy bonds, amounting to the principal sum of $27,236,512, all of the tenor and effect described in the said Acts of Congress, which created and constituted ipso facto a mortgage and lien, as in said Acts of Congress provided (which mortgage and lien are hereinafter termed the "Subsidy Lien"), in favor of the United States, to secure the repayment to the United States of the amount of said Subsidy Bonds so issued and delivered to said The Union Pacific Railroad Company, together with all the interest thereon which should have been paid by the United States, upon the whole line of railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds were issued, formerly belonging to The Union Pacific Railroad Company, with all the rights, functions, immunities and appurtenances thereunto belonging, and upon all the property, estate, rights and
6027 franchises of every kind and description granted or conveyed by the United States to said The Union Pacific Railroad Company, and also as and to the extent by law provided upon all the estate and property, real, personal and mixed, assets and income of the said The Union Pacific Railroad Company, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien or claim thereon, including all estate, property and assets derived by the said The Union Pacific Railway Company from the said The Union Pacific Railroad Company, by virtue and force of said consolidation; and

Whereas, The Union Pacific Railway Company having made default in the repayment to the United States of the amount of the Subsidy Bonds issued and delivered to said The Union Pacific Railroad Company, to the extent and in the manner specified in the decrees hereinafter referred to, the United States of America, by its Attor-

ney-General, acting under the direction of the President of the United States, filed in the Circuit Court of the United States for the District of Nebraska their bill in equity against The Union Pacific Railway Company, Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, Receivers of The Union Pacific Railway Company, F. Gordon Dexter and Oliver Ames, as trustees of the First Mortgage of The Union Pacific Railroad Company, Union Trust Company of New York, as trustee; J. Pierpont Morgan and Edwin F. Atkins, as trustees, and the Central Trust Company of New York, as Trustee, defendants, to foreclose the Subsidy Lien of the United States, and such proceedings were had in said cause that on the 29th day of July, 1897, a certain decree of foreclosure and sale was entered by said Court, whereby it was adjudged that the United States had a mortgage and lien upon all
6028 of the property hereinafter more particularly described as having been sold by the Master and by this indenture conveyed, including the bonds in the United States-Union Pacific Sinking Fund, as shown in the said decree; and said The Union Pacific Railway Company, party hereto of the second part, was adjudged and decreed to pay, or cause to be paid within twenty days after the entry of the said decree, into the Treasury of the United States of America the sum of $18,487,629.18, and that, in default of such payment by The Union Pacific Railway Company, or by some one claiming under it, or by some one for its account, or by some of the defendants in said cause, within the time aforesaid, all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description mentioned in the said decrees and embraced in and covered by the said Subsidy Mortgage and Lien to the United States, and all securities in the said United States-Union Pacific Sinking Fund be sold, and all the right, title, estate, interest and equity of redemption of the said defendant The Union Pacific Railway Company and of all persons claiming or to claim under it, and of all the parties to said cause, except the prior incumbrancers and title and lien holders in said decree described, viz., those claiming under the American Loan and Trust Company Equipment Trust Indenture, and under the Omaha Bridge Mortgages, to said John Pierpont Morgan and Edwin F. Atkins, as Trustees, and the Central Trust Company of New York as trustee, respectively, and those claiming under the First Mortgage of November 1, 1865, including the Receivers appointed thereunder, of, in or to the said railroad, telegraph,
6029 franchises, rolling stock, and property, and every part and parcel thereof, embraced in said Subsidy Lien and Mortgage, and all the right, estate, interest and equity of redemption of all and each of the parties to said cause of, in or to the securities in the said Sinking Fund and in and to every part and parcel thereof, be forever absolutely barred and foreclosed, saving only the rights in said decree expressly excepted and reserved; and

Whereas, similar and auxiliary bills of the same character and effect were filed by the United States of America in the Circuit Courts of the United States for the Southern District of Iowa, the District of Wyoming, the District of Colorado and the District of Utah, in each of which Districts portions of the premises, property and franchises embraced in said Subsidy Lien were situate; and said decree entered by the Circuit Court of the United States for the District of Nebraska on the 29th day of July, 1897, was adopted, rendered and announced as the decree of each of said other courts in said similar and auxiliary causes therein pending, by decrees entered by such courts respectively on the following dates, viz.: by said Circuit Court of the United States for the Southern District of Iowa, on the 29th day of July, 1897, by said Circuit Court of the United States for the District of Wyoming, and said Circuit Court of the United States for the District of Colorado, on the 31st day of July, 1897, and by said Circuit Court of the United States for the District of Utah, on the 2d day of August, 1897—to which said several suits and to the proceedings and record thereof in each of the said Courts including said Circuit Court of the United States for the District of Nebraska, reference is hereby made; and

6030 Whereas, neither The Union Pacific Railway Company, nor any one claiming under it, nor any one for its account, nor any defendant in any of the said causes above mentioned, made payment of the sum decreed as aforesaid, or any part thereof, within the time aforesaid or at any time; and

Whereas, William D. Cornish, the party of the first part hereto, was, in and by the said decree of the Circuit Court of the United States for the District of Nebraska, and in and by said ancillary decrees of the United States Circuit Court in and for each of the said other Districts, appointed Special Master to execute said decrees and make the sales therein provided to be made, and to execute and deliver the deeds of conveyance to the purchaser or purchasers thereof upon confirmation of such sales and payment of the purchase price thereof as in said decrees provided; and

Whereas, the party of the first part gave due notice of the time and place of the sales pursuant to the said decrees and according to law, and complied in all respects with the provisions of said decrees relating to the sales thereby decreed and directed; and, in pursuance of the said decrees, at the place therein specified—to wit, at the freight station of The Union Pacific Railway Company, in the City of Omaha, in the State of Nebraska—did duly sell at public auction on the 1st day of November, 1897, to Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, the highest and best bidders at said sale, all and singular the premises, railroads and property of every kind and description mentioned in the said decrees, and embraced in and covered by the Subsidy Lien of the United States as determined

6031 and defined in said decrees, not including the bonds in the United States-Union Pacific Sinking Fund, at and for the sum of thirty-nine million eight hundred and eighty-three thousand two

hundred and eighty-one 67/100 dollars ($39,883,281.67), and, at the same place and on the same day, sold to the same persons, they being the highest and best bidders therefor, all the bonds in the said sinking fund, at and for the sum of thirteen million six hundred and forty-five thousand two hundred and fifty 89/100 dollars ($13,645,250.89): and

Whereas, afterwards, William D. Cornish, Special Master as aforesaid, did duly make and file his report of said sales to the said several Courts, and, by decrees entered by said several Circuit Courts of the United States in said causes therein pending respectively, the said report of said sales was in all things ratified, approved and confirmed and the sales therein reported made absolute, subject to all the terms and conditions of said several decrees of foreclosure and sale and to the due performance by the purchasers or their successors or assigns of all the obligations therein prescribed; and

Whereas, said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, the parties of the third part hereto, have in all respects complied with the provisions of the said decrees of foreclosure and sale and have paid and made settlement of the purchase price as provided in said decrees and the orders of said Courts; and

Whereas, in pursuance of the said decrees, all the bonds in said United States-Union Pacific Sinking Fund have been transferred and delivered to said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, and the cash in said United States-Union Pacific Sinking Fund has been applied and credited in payment of the
6032 Subsidy debt of said The Union Pacific Railway Company to the United States secured by said Subsidy Lien; and

Whereas, the said purchasers have duly sold, assigned, transferred and set over to Union Pacific Railroad Company, the party of the fourth part to this indenture, their said bid and their right to receive a deed pursuant to the said decrees and sale for the property, railroad and premises purchased by them at the sale by the Master aforesaid, except the said bonds in the said United States-Union Pacific Sinking Fund:

Now, therefore, this Indenture witnesseth:

That the said William D. Cornish, Special Master as aforesaid, party of the first part to these presents, in order to carry into effect the said sale made by him as aforesaid, and in pursuance of the aforesaid decrees, and in conformity to law, and in consideration of the premises, and in consideration of the payments aforesaid, hath granted, bargained, sold, assigned, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, release, convey and confirm, unto Union Pacific Railroad Company, the party of the fourth part hereto, and to its successors and assigns, in fee simple, forever, all and singular all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description (except only the said securities in the United States-Union Pacific Sinking Fund) embraced in and covered by the Sub-

sidy Mortgage and Lien of the United States, as described in and defined by said decrees,—being the whole line of railroad and telegraph, together with the rolling stock, fixtures and property
6033 of every kind and description and in consideration of which Subsidy Bonds of the United States were issued, formerly belonging to The Union Pacific Railroad Company, with all the rights, functions, immunities and appurtenances thereunto belonging, and also as and to the extent by law provided all the property, estate, rights and franchises of every kind and description granted or conveyed by the United States to the said The Union Pacific Railroad Company, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien or claim thereon, and including all estate, property and assets, real, personal and mixed, derived by The Union Pacific Railway Company from the said The Union Pacific Railroad Company by virtue and force of the consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, and including also all the property embraced in the First Mortgage of The Union Pacific Railroad Company, dated November 1st, 1865, as in said decrees found to be and described as follows, viz.:

All the railroad, telegraph, premises, rights, franchises, lands and property described in said mortgage, including the railroad, right of way, and railroad property of the Union Pacific Railway Company extending from the eastern terminus of The Union Pacific Railway on the east line of the said Railway Company's property between Twelfth Avenue and Thirteenth Avenue, in Council Bluffs, Iowa, in a westerly direction to Twentieth Street, in Omaha, Nebraska, including the railroad and railroad bridge across the Missouri River, and also extending from the initial point of construction of the Union Pacific Railroad near the northeast corner of and within section
6034 10, Township 15, Range 13, east of the 6th principal meridian in Omaha, Nebraska, thence in a southerly and westerly direction through the city of Omaha to Twentieth Street in said city of Omaha at a junction with that part of said railroad from Council Bluffs aforesaid, and extending thence in a westerly direction through the counties of Douglas, Sarpy, Dodge, Colfax, Platte, Merrick, Hall, Buffalo, Dawson, Lincoln, Keith, Deuel, Cheyenne and Kimball, in the State of Nebraska, and Sedgwick County, in the State of Colorado, and the Counties of Laramie, Albany, Carbon, Sweetwater and Uintah in the State of Wyoming, and the Counties of Summit, Morgan, Davis and Weber, in the State of Utah, to a junction with the Central Pacific Railroad at a point five miles west of Ogden, in the State of Utah, a distance of 1,042.41 miles of main line railroad; and also the rights of way, railroads, and railroad tracks constituting spurs or branch lines of railroad extending from points of junction with the said main lines (1) at a point about .6 of a mile west of what is known as Transfer Depot at Council Bluffs, in a northeasterly direction to what is known as the Broadway Depot in said city, a distance of 1.72 miles in the city of Council Bluffs; (2) at Almy

Junction, Wyoming, in a northerly direction to a terminus at Mine No. Seven, a distance of 3.88 miles; (3) at Cheyenne, Wyoming, in a northwesterly direction to a connection with the track of the Union Pacific, Denver and Gulf Railway, a distance of 2.04 miles; (4) at a point on said main line in Omaha, Nebraska, northerly and easterly, a distance of 18,000 feet to certain ice-houses and industries on what is known as Cut-off Lake; also lots, yards, terminal grounds, shop grounds, streets and alleys, lands and tracts of land, tenements
6035 and hereditaments, easements and rights of way owned or acquired or appropriated by or for The Union Pacific Railroad Company, The Union Pacific Railway Company, or The Receivers of the property of said last-named Company, for the purposes of said lines of railroad, including all lands so acquired or appropriated the title to which stands in the names of trustees for said The Union Pacific Railway Company; and also all lands acquired for or used for stations or for terminal purposes, and also all rights and estates, legal and equitable, of The Union Pacific Railway Company in and to all stations, depots, and in and to all union depots upon or connected with the line of its railway or used in connection therewith, and including all the lands and other property designated in the reports of the Special Master, filed in said several causes respectively and referred to in said decrees, and in the Schedules in said reports contained and therein numbered 1, 2, 3, 4 and 5, hereby referred to and made part hereof, all the said property being property owned acquired, or appropriated and necessary to the use and operation of the said railroad; also the shops, freight depots, general office building, round houses, depots, engine houses, car houses, station houses, machine shops, work shops, rails, switches, turnouts, spurs, side tracks, sidings and other structures and facilities upon said mortgaged premises, constructed, acquired or owned for the purposes of or in connection with said lines of railway; also the lands, interests and easements in lands, pipes, pump houses, structures, pipe lines, appliances, facilities and easements of said company pertaining to the water supply upon or along said lines of railroad, and the tools, appliances, fixtures, materials and supplies owned or acquired for
6036 the purposes thereof; also the locomotives, passenger cars, Pullman sleeping cars, dining cars, freight cars and other cars, and all other equipment and rolling stock owned by the Union Pacific Railway Company, and all interest of said The Union Pacific Railway Company in any other equipment or rolling stock, to the extent that said equipment and rolling stock so owned, or in which the said railway company has any interest, was acquired or provided for or by said railway company for the purposes of said railroad and premises or is necessary for the running and operation thereof, the same being the undivided seventy per cent. of all the rolling stock or equipment owned by the Union Pacific Railway Company or in which said company has any interest; also all the lines of telegraph, telegraph material, instruments, fixtures and appliances belonging to the said railway company and located upon or used in connection with

said premises; also all furniture, fixtures, appliances, apparatus, supplies and material owned, acquired or provided by said Company for use in connection with said railroad and premises, located in the various offices of said railway company upon or remote from said railroad, including the offices of said company in the cities of Omaha, Nebraska, and Boston, Massachusetts, and also all the property real, personal and mixed of said The Union Pacific Railway Company, and all its rights and interests in and to property of every kind and nature, whether of the character herein described or otherwise, and in whosesoever possession the same may be, and the corporate rights and franchises of said The Union Pacific Railroad Company or its successor The Union Pacific Railway Company, so far as such property, rights, interests and franchises pertain to the said railroad,
6037 telegraph and premises; also all the moneys, credits and property not herein otherwise specified, in the possession of or under the control of the said Receivers, or to which said Receivers are or may be entitled, which have been or may be derived by said Receivers from or on account of said premises, or from the sale or other disposition of any of said property, or from the operation of the said premises by said Receivers, subject to the charges of the Receivers in respect thereof.

Said lands above referred to as standing in the names of Trustees for the said The Union Pacific Railway Company are more particularly described as follows, viz:

DESCRIPTION.

POTTAWATTAMIE COUNTY, IOWA.

	Acres.
Commencing at a point 471.5 ft. South of the northeast corner of the NW ¼ of SE ¼ of Sec. 34, T 75 N. R. 44 W. of the 5th P. M.; thence (taking the 40 acre line for due north & south line) S 57 deg. 31′ W. 369.23 ft.; thence West to a point 676.5 ft. south and 329.34 ft. east of the center of said Sec. 34; thence south parallel with the North & South center line of said Sec. 34 660 feet, to a point in the present North right of Way line of the Union Pacific Ry. Co.; thence East on said R. O. W. line 913.16 ft.; thence Northeasterly 89 ft. to a point in 40 acre line 60 ft. more or less North of the SE corner of the NW ¼ of SE ¼ of said Sec. 34 thence North on said 40 acre line 795.3 feet to the place of beginning, containing an area of	15.42
Atkins, Baker & McFarland, Trustees.	
6038 A tract in the NE ¼ of SE ¼ of Sec. 34 T. 75 N. R. 44 W. of 5th P. M. of Iowa, described as follows: Commencing at a point 185.3 ft. South from the East quarter section corner of said Sec. 34, running thence south on Section line 389.2 ft., or to grounds as now owned by Union Pac. Railway Co.; thence Southwesterly on Northerly line of said grounds 1484 feet to West line of said NE ¼ of SE ¼; thence North on said line 1080 ft.; thence East 1323 feet or to place of beginning Except tract sold to S. H. Finney, described as follows:	
Commencing at a point 537 feet south from the East ¼ Section corner of said Sec. 34 and running thence south 39½ ft. to Union Pacific Ry. grounds; thence southwesterly on northerly line of said grounds 270¾ feet; thence N. 30 deg. W. 188¾ ft.; thence East 335 ft. to place of beginning. Containing 0.737 of an acre	21.56
Atkins, Baker & McFarland, Trustees.	

	Acres.
SW. ¼ of NE ¼ and NW ¼ of Sec. 2 and all Sec. 3, all in Township 74. Range 44 West	791.10
Dexter, Atkins & Mink, Trustees.	
A tract of land in the NE ¼ of SE ¼ Sec. 34, T. 75 N. R. 44 W. in Pottawattamie Co., Iowa, described as follows:	
6039 Commencing at a point 537 ft. south from East ¼ Section corner of said section 34 and running thence south 39½ feet to U. P. Ry. ground; thence southwesterly on northerly line of said grounds 270¾ feet; thence north 30 deg. West 188¾; thence East 335 feet to place of beginning, containing an area of	0.74
Dexter, Atkins & Mink, Trustees.	
The East 44 feet of Lot 1; the east 44 feet and the west 22 feet of Lot 2, and all of Lots 3 & 5, all in Block 9 in Grimes Addition to Council Bluffs	0.66
Dexter, Atkins & Mink, Trustees.	
Part of Lots 4 and 6 in Block 9 in Grimes Addition to Council Bluffs not in Union Avenue	0.44
Dexter, Atkins & Mink, Trustees.	
That portion of Lot 7 in Block 9 in Grimes Addition to the City of Council Bluffs, not taken and used for the Right of Way of "Union Avenue"	0.02
Atkins, Baker & McFarland, Trustees.	
Part of Lots 1, 2, 3, 4 & 5 in Block 13, in Bayliss Addition to Council Bluffs not in Union Avenue	0.57
Dexter, Atkins & Mink, Trustees.	
An undivided half of Lots 1, 2 & 3 in Block 11 in the Sub-division of Riddle Tract in the City of Council Bluffs. All the interest of J. S. Casement, mary Lockwood Casement, Robert L. Casement, Grey Casement, and Daniel Wells Casement in and to 6040 Lots 1, 2 & 3 in Block 11 in Riddle's Sub-division of the City of Council Bluffs, Iowa	0.36
Atkins, Baker & McFarland, Trustees.	
All the North 35⅓ feet of Lot 14 and all of Lots 15 and 16 in Block 11; all in the Sub-division of the Riddle Tract, City of Council Bluffs	0.32
Atkins, Baker & McFarland, Trustees.	
All of Lot 17 in Block 11 in Sub-division of the Riddle tract, City of Council Bluffs	0.12
Atkins, Baker & McFarland, Trustees.	
All of Lot No. 18 in Block 11 in Sub-division of Riddle tract, City of Council Bluffs	0.12
Atkins, Baker & McFarland, Trustees.	
All of Lot 19 in Block 11 in the Sub-division of the Riddle tract in the City of Council Bluffs	0.12
Atkins, Baker & McFarland, Trustees.	
All of Lot 20 in Block 11 in the Sub-division of the Riddle tract in the City of Council Bluffs	0.12
Atkins, Baker & McFarland, Trustees.	
All of Lots 1, 2, 9 & 10 in Block 12; also the North 22⅔ ft. of Lot 3 in Block 12 and the north 22⅔ ft. of Lot 11 in Block 12 and the north 113⅓ ft. of Lot 8 in Blk. 12; all in the Sub-division of the Riddle Tract of Council Bluffs	0.70
Atkins, Baker & McFarland, Trustees.	
All Lot 1 in Block 33 in the Sub-division of the Riddle tract in the City of Council Bluffs. 6041 All of Lot No. 2 in Block No. 33 in Sub-division of the Riddle tract, City of Council Bluffs	0.25
Atkins, Baker & McFarland, Trustees.	
All Lot 3 in Block 33 in Sub-division of the Riddle tract in the City of Council Bluffs. All of Lot 12 in Block 33, Riddle's Sub-division of the City of Council Bluffs	0.25
Atkins, Baker & McFarland, Trustees.	

	Acres.
All of Lots 13 & 14 in Block 33 in Sub-division of Riddle tract, City of Council Bluffs	0.25
Atkins, Baker & McFarland, Trustees.	
All of Lot 15, Block 33 in the Sub-division of Riddle tract, City of Council Bluffs All Lot 16 in Block 33 in the Sub-division of the Riddle tract in the City of Council Bluffs	0.20
Atkins, Baker & McFarland, Trustees.	
All of Lot 1 in Block 34 in the Sub-division of the Riddle tract, City of Council Bluffs Lots 2 and 3 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs	0.37
Atkins, Baker & McFarland, Trustees.	
All of Lots 12, 13 & 14 in Block 34 in Sub-division of Riddle tract, City of Council Bluffs	0.38
Atkins, Baker & McFarland, Trustees.	
Lot 15 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs	0.10
Atkins, Baker & McFarland, Trustees.	
6042 All Lot 16 in Block 34 in the Sub-division of the Riddle tract in the City of Council Bluffs	0.10
Atkins, Baker & McFarland, Trustees.	
All of Lot 14 in the Block 37 in Sub-division of the Riddle Tract, City of Council Bluffs	0.13
Atkins, Baker & McFarland, Trustees.	
All of Lots 1, 2 & 3 in Block 38 in Sub-division of the Riddle tract, City of Council Bluffs	0.37
Atkins, Baker & McFarland, Trustees.	
All lot 11 in Block 38 in the Sub-division of the Riddle tract in the City of Council Bluffs	0.12
Atkins, Baker & McFarland, Trustees.	
All Lots 12, 13 & 14 in Block 38 in the Sub-division of the Riddle tract in the City of Council Bluffs	0.37
Atkins, Baker & McFarland, Trustees.	
All of Lot 15 in Block 38 in Sub-division of the Riddle tract, City of Council Bluffs All of Lot 16 in Block 38 in Sub-division of the Riddle tract in the City of Council Bluffs	0.18
Dexter, Atkins & Lane, Trustees.	

DOUGLAS COUNTY, NEBRASKA.

City of Omaha.

Lots 2 and 3 in Block 208 in the City of Omaha, as surveyed and lithographed	0.40
Atkins, Baker & McFarland, Trustees.	
Lot 4 in Block 208 in the City of Omaha, as surveyed and platted	0.20
Atkins, Baker & McFarland, Trustees.	
6043 Lot 5 in Block 208 in the City of Omaha, as surveyed and platted	0.20
Atkins, Baker & McFarland, Trustees.	
Lot 6 in Block 208 in the City of Omaha	0.20
Atkins, Baker & McFarland, Trustees.	
Lot 2 in Block 215 in the City of Omaha	0.20
Atkins, Baker & McFarland, Trustees.	
Lot 3 in Block 215 in the City of Omaha	0.20
Atkins, Baker & McFarland, Trustees.	
Lot 4 in Block No. 215 in the City of Omaha, as surveyed and platted	0.20
Atkins, Baker & McFarland, Trustees.	

	Acres.
Part of Lot 2 (being 2,178 sq. ft.), in Block No. 226, in the City of Omaha, according to the recorded plat thereof. Atkins, Dexter & Lane, Trustees.	
Commencing at a point 346 feet north of the SE corner of the SW ¼ of the SW ¼ of section 23 in T. 15 N. of R. 13 E of the 6th P. M.; thence east 410 feet; thence South 88 ft.; thence west 240 ft.; thence north 56 ft.; thence west 170 feet; thence north 32 feet to the place of beginning, containing 26,560 square feet Atkins, Baker & McFarland, Trustees.	0.61
Lots 5, 6 & 7 in Block F Dexter, Atkins & Mink, Trustees.	0.60
Lot 1 in Block 178 in the City of Omaha, as surveyed and lithographed Atkins, Baker & McFarland, Trustees.	0.20
6044 All lots numbers 2 and 3 in Block No. 178 in the City of Omaha Atkins, Baker & McFarland, Trustees.	0.40
All the following described real estate, situated in the City of Omaha, County of Douglas and State of Nebraska, to wit: Lots 5, 6, 7 & 8 in Block 178;	
Lots 6, 7 & 8 in Block 179 Atkins, Baker & McFarland, Trustees.	1.22
Lot 5 in Block 179, as surveyed and platted by the Council Bluffs and Nebraska Ferry Co Dexter, Atkins & Mink, Trustees.	0.20
Lot No. 5 in Block 180 in the City of Omaha Atkins, Baker & McFarland, Trustees.	0.20
Lot Nos. 6 and 8 in Block 180 in the City of Omaha Atkins, Baker & McFarland, Trustees.	0.40
Lot 4 in Block 181 Dexter, Atkins & Mink, Trustees.	0.20
All Lots 1 & 4 in Block 188 in the City of Omaha. Also a parcel of land adjoining said Lot 1 on the East, commencing at the NE corner of said Lot 1 in Block 188 aforesaid; thence South 132 feet to the SE corner of said Lot 1; thence East 20 feet; thence North 133 ft.; thence west 20 ft. to place of beginning. Containing 2,640 square feet Atkins, Baker & McFarland, Trustees.	0.46
All Lots 2 and 3 in Block 188 in the City of Omaha Atkins, Baker & McFarland, Trustees.	0.40
6045 All of Lots 1, 2 & 3, Block 189, South of Right of Way of the U. P. Ry., containing 1⅜ of a regular City lot Atkins, Baker & McFarland, Trustees.	0.32
All that portion of Lot 4 in Block 189 in the City of Omaha not included in a certain grant for Right of Way made to the Union Pacific Railroad Company by deed dated March 3, 1864, and recorded on the 21st day of the same month in Book "P" of deeds at Page 301 of the records of said Douglas County Atkins, Baker & McFarland, Trustees.	0.02
Part of Lot 2 (being 6,534 sq. ft.) in Block 226 in the City of Omaha, according to the Recorded Plat thereof.	
Lots 7, 8, 9 & 10 in block 15 and fractional Block 17 in the Town of Millard Dexter, Atkins & Mink, Trustees.	0.33
Lots 7, 8, 9 & 10 in Block 23 in the Town of Waterloo Dexter, Atkins & Mink, Trustees.	0.75

DODGE COUNTY, NEBRASKA.

Lots 1 & 2 in Block C in the City of North Bend Lot 5 in Block 53 in the City of North Bend, except the East 15 feet of lot Dexter, Atkins & Mink, Trustees.	1.42

PLATTE COUNTY, NEBRASKA.

City of Columbus.

					Trustees.
	Lot 3 & 4 in Block	41	0.40	Dexter, Atkins & Mink.	
6046	" 7 "	58	0.20	" " "	
	" 3 & 4 "	59	0.40	" " "	
Lot 4	"	77	0.20	" " "	
" 3	"	80	0.20	" " "	
" 1 & 2	"	86	0.40	" " "	
" 8	"	100	0.20	" " "	
" 5 & 6	"	101	0.40	" " "	
" 7	"	102	0.20	" " "	
" 3 & 4	"	110	0.40	" " "	
" 5	"	112	0.20	" " "	
" 2 & 7	"	113	0.40	" " "	
" 7 & 8	"	121	0.40	" " "	
" 7	"	125	0.20	" " "	
" 6	"	145	0.20	" " "	
" 7	"	159	0.20	" " "	
" 8	"	168	0.20	" " "	
" 5	"	187	0.20	" " "	
" 3 & 4	"	190	0.40	" " "	
" 7	"	195	0.20	" " "	
" 1	"	199	0.20	" " "	
" 1	"	209	0.20	" " "	
" 6	"	211	0.20	" " "	
" 7	"	224	0.20	" " "	
" 1 & 7	"	225	0.40	" " "	
" 2	"	229	0.20	" " "	
" 6	"	231	0.20	" " "	
" 3, 5 & 6	"	232	0.60	" " "	
	Lot 2 "	234	0.20	" " "	
6047	" 2 "	259	0.20	" " "	
	Out Lot 7		11.65	" " "	
	9		7.75	" " "	
SE ¼ of NW ¼ Sec. 20-17-1 W			40.00	" " "	

HALL COUNTY, NEBRASKA.

City of Grand Island.

			Trustees.
Lots 5, 6, 7 & 8 in Block	39	0.80	Dexter, Atkins & Mink.
" 5, 6, 7 & 8 "	40	0.80	" " "
" 5, 6, 7 & 8 "	41	0.80	" " "
" 3, 4, 5 & 6 "	42	0.80	" " "
First Addition to Grand Island.			
Frac. Lot 7 in Block	105	0.03	" " "

BUFFALO COUNTY, NEBRASKA.

Kearney Junction.

			Trustees.
	Lots 89, 602, 719	0.40	Dexter, Atkins & Mink.
Park)	" 1398, 1399, 1400, 1404, 1405 & 1406	0.90	" " "
	" 1477	0.15	" " "

LARAMIE COUNTY, WYOMING.

City of Cheyenne.

(Fractional Lot No. 1 in Block 833; Also Lots 1, 2 & 3 and frac. Lots 4, 5, 6, 7 & 8 in Block 834. Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 835. All in Section 32, T. 14, N. R. 66 W.; Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 386; Also Lots No. 1, 2, 3, 4, 5, 6, 7 & 8 in Block 837;
6048 Also Lots Nos. 1, 2, 3, 4, 5, 6, 7 & 8 in Block No. 838; Also Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Block 839—All in Section 32, T. 24 N. R. 66 W., as designated on the official plat of Townsite of said City of Cheyenne ---------- 9.86

Atkins, Baker & McFarland, Trustees.

Lot 22 in Block 122, City of Laramie ---------- 0.72

Dexter, Atkins & Mink, Trustees.

SODA LAKES, NEAR LARAMIE, WYOMING.

SW ¼ of NW ¼ of NE ¼ ----------
NW ¼ of SW ¼ of NE ¼ ----------
E ½ of NW ¼ ---------- } Sec. 4, T. 14, N. R. 75 W.
S ½ of NW ¼ of NW ¼ ----------
NE ¼ of SW ¼ of NW ¼ ----------
N ½ of NW ¼ of SW ¼ ---------- Sec. 5, T. 14, N. R. 75 W.
NE ¼ of NE ¼ of SE ¼ ---------- Sec. 6, T. 14, N. R. 75 W.
SE ¼ of SE ¼ of SW ¼ ---------- Sec. 33, T. 15, N. R. 75 W.

Also all claim in and to other portions of Sec's 4 & 5, T. 14 N. R. 75 W. and in and to other portions of Sec. 33 T. 15 N. R. 75, which may have been at any time vested in those through whom above property was obtained ---------- 200.00

Dexter, Atkins & Mink, Trustees.

WEBER COUNTY, UTAH.

A part of Lot 6 in Block 4 in South Ogden Survey, beginning at the northwest corner of said Lot 6 and running thence south 20 rods; thence east 10 rods; thence north 2½ rods; thence east 2 rods;
6049 thence north 17½ rods; thence west 12 rods to place of beginning ---------- 1,47

Atkins, Dexter & Lane Trustees.

To have and to hold all and singular the above-mentioned and described railroad, telegraph, rolling stock, franchises, and property of every kind and description hereinbefore mentioned and conveyed, or intended to be conveyed, unto the said Union Pacific Railroad Company, party of the fourth part hereto, being the corporation organized and existing under and pursuant to the laws of the State of Utah, and to its successors and assigns forever, as fully and absolutely as the party of the first part may or ought by virtue of the said decrees to convey the same; saving and excepting the right of the Government to have the preference at all times in the use, at fair and reasonable rates of compensation, to be paid to the party of the fourth part, not to exceed the amounts paid by private parties for the same kind of service, of said telegraph line and railroad, for the transmission of despatches over said telegraph line, and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the Government, whenever required by any Department thereof;

And subject to and saving the title of The American Loan and Trust Company, and those claiming under the Equipment Trust Indenture of the Union Pacific Railway Company to the said The American Loan and Trust Company, dated October 1st, 1887, to the extent that

and so far as the said indenture affects the portion of the equipment therein embraced which is adjudged in said decrees to pertain to said mortgaged premises, and to the extent of the purchase money indebtedness in said decrees found to be outstanding thereunder;

6050 and subject to and saving the lien of the Omaha Bridge Mortgage of The Union Pacific Railroad Company to John Edgar Thomson, John Pierpont Morgan and Elisha Atkins, as trustees, dated the first day of April, 1871, and the indenture supplemental thereto, dated the 27th day of September, 1871, and the lien of the Omaha Bridge Renewal Mortgage, executed by The Union Pacific Railway Company to the Central Trust Company of New York, as trustee, dated the first day of October, 1885, upon and in respect of the premises embraced in and covered by said Bridge Mortgages, and to the extent of the indebtedness thereby secured and in said decrees found to be outstanding and unpaid; and subject to and saving, the lien of the First Mortgage, dated November 1, 1865, executed by said The Union Pacific Railroad Company to Edwin D. Morgan and Oakes Ames, as Trustees, upon, to the extent, and in respect of, the premises embraced in said First Mortgage as in said decrees described and defined; subject, also, to the possession and rights of the Receivers, as provided in said decrees; and saving and subject to all the title, estate, claim and rights of the purchasers, and the assigns of such purchasers and their successors under a certain decree entered by the Circuit Court of the United States for the District of Nebraska, on the 29th day of July, 1897, in a certain cause therein pending wherein F. Gordon Dexter and Oliver Ames, Second, Trustees, were complainants, and said The Union Pacific Railway Company and others were defendants, and under certain decrees entered by the Circuit Courts of the United States for the Southern District of Iowa and the Districts of Wyoming, Colorado and Utah and under a deed bearing even date herewith, executed by the said William D. Cornish, as Special Master, and others pursuant to said decrees.

6051 And subject also to the further express condition that the party hereto of the fourth part, its successors or assigns, shall as part consideration and purchase price of the property purchased and herein conveyed, and in addition to the sums required by said decrees to be paid, and paid, take the same, and receive this deed therefor upon the express condition that it or its successors or assigns shall, as provided in said decrees, pay, satisfy and discharge the obligations, liabilities and charges in said several decrees, specified as follows:

First. All the proper costs of said causes and of the expenses of the sale under said decrees, including the compensation and necessary expenses of the Special Master appointed to make the sale;

Second. The charges, compensation, allowances and disbursements of the complainants and any of the other parties to said causes entitled thereto, their solicitors and counsel;

And subject also to all other terms, conditions and reservations of each of the said several decrees of foreclosure and sale and the sev-

eral decrees confirming the said sale entered in the United States Circuit Courts for the District of Nebraska, the Southern District of Iowa, the Districts of Wyoming, Colorado and Utah, respectively, whether in this indenture expressly referred to or not, including the reservation of the said Courts to retake and resell the premises herein conveyed in case the party of the fourth part to this indenture or its successors or assigns should fail to pay any sum required to be paid under the said decrees within the time specified in said decrees respectively after the entry of an order requiring such payment.

6052 It being the true intent and purpose hereof to convey all the property and premises directed by the said decrees to be conveyed, whether the same are in this indenture particularly described or not, subject to all prior mortgages, liens and incumbrances in said decrees found or established, and subject to all the reservations, conditions and terms in said decrees prescribed.

AND THIS INDENTURE FURTHER WITNESSETH, that said The Union Pacific Railway Company, party hereto of the second part, for and in consideration of the premises and in pursuance of the said decrees and orders of the said Courts respectively, has bargained, sold, assigned, transferred, conveyed and released, and by these presents does bargain, sell, assign, transfer, convey and release unto the party hereto of the fourth part, all the right, title and interest of The Union Pacific Railway Company, party hereto of the second part, in and to the said railroad, rights, property, functions, franchises, privileges, immunities, money and credits which by the said decrees were ordered to be sold, and all the property described in the said decrees and therein ordered to be sold and herein conveyed, assigned, transferred or released by the parties of the first, second and third part, respectively, to this Indenture, as fully and absolutely as the said party of the second part hereto can or ought by virtue of the said decrees to convey the same: To have and to hold all and singular the said railroad, premises and property, real and personal, unto the said party of the fourth part hereto, its successors and assigns forever.

AND THIS INDENTURE FURTHER WITNESSETH that the said Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, being the purchasers at the said sale of the said railroad, property and

6053 premises herein conveyed by the said Special Master under the said decrees of foreclosure, having assigned, transferred and set over, as hereinbefore recited, unto the party of the fourth part their said bid and their right to receive conveyance of the railroad, franchises and other property purchased, and all their other rights under the said decrees, or by virtue of their said bid and purchase, do hereby join in the execution of this Indenture for the purpose of releasing and confirming, and they do hereby release and confirm unto the said Union Pacific Railroad Company, party hereto of the fourth part, and its successors and assigns forever all of their right, title and interest in and to the property and premises in this Indenture conveyed and each and every part thereof.

It is understood that no personal covenant or liability shall be implied against the party of the first part, or the parties of the second part, or either of them, by reason of the execution of this deed.

In order to facilitate the recording hereof, twenty-five originals of this indenture have been executed, acknowledged and delivered by the respective parties, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered, shall be deemed an original and all collectively but one instrument.

In witness whereof, the said parties hereto of the first and third parts, have hereunto set their hands and seals, and the parties of the second and fourth part have caused these presents to be signed by their respective officers, duly authorized, and their respective corporate seals to be hereto affixed, and attested by their respec-
6054 tive secretaries the day and year first above written.

WILLIAM D. CORNISH (SEAL.) Special Master.

LOUIS FITZGERALD (SEAL.)
ALVIN W. KRECH (SEAL.) } Purchasing Trustees.

THE UNION PACIFIC RAILWAY COMPANY
[SEAL] By S. H. H. CLARK, *President.*
Attest:
ALEX. MILLAR,
Secretary.

UNION PACIFIC RAILROAD COMPANY,
[SEAL] By HORACE G. BURT, *President.*
Attest:
ALEX. MILLAR,
Secretary.

Signed, sealed and delivered by William D. Cornish, Louis Fitzgerald and Alvin W. Krech, in the presence of	G. V. TURNER WALTER S. WILSON
By S. H. H. Clark, President, in behalf of the Union Pacific Railway Company, in the presence of	T. M. ORR F. C. DAVIS
By Alex. Millar, Secretary, in behalf of The Union Pacific Railway Company, in the presence of	L. F. TIMMERMAN JOSEPH F. DALY
By Horace G. Burt, President, and Alex. Millar, Secretary, in behalf of Union Pacific Railroad Company, in the presence of	JAMES A. CASE G. G. BOARDMAN

6055 Mr. LOVETT. It is further stipulated that on the 2nd day of February, 1897, the United States of America filed in the Circuit Court of the United States for the District of Kansas, a bill for the foreclosure of the Lien existing in favor of the United States against that portion of the Kansas Pacific Railroad described in the

decree of foreclosure, and that in such suit in said court, on July 30, 1897, a decree of foreclosure was rendered.

I now offer in evidence Defendants' Exhibit 21, being copy of the decree of foreclosure in favor of the United States of America in the suit just mentioned.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 21 is as follows:

DEFENDANTS' EXHIBIT 21.

At a Session of the Circuit Court of the United States held in and for the _____ District of Kansas, on the 30th day of July, 1897.

Present: Walter H. Sanborn, Circuit Judge.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
THE UNION PACIFIC RAILWAY COMPANY; HENRY M. Alexander and John F. Dillon, as Trustees; John A. Stewart and John F. Dillon, as Trustees; Russell Sage and George J. Gould, as Trustees; The Mercantile Trust Company, as Trustee; The American Loan and Trust Company, as Trustee; John A. Stewart and William Endicott, Jr., as Trustees; Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert and John W. Doane, Receivers, Defendants.
} KANSAS PACIFIC

6056

FINAL DECREE.

This cause came on to be heard upon the bill of complaint of the United States of America, complainants, and upon the several answers of The Union Pacific Railway Company; Henry M. Alexander and John F. Dillon, as Trustees; John A. Stewart and John F. Dillon, as Trustees; Russell Sage and George J. Gould, as Trustees; the Mercantile Trust Company, as Trustee; the American Loan & Trust Company, as Trustee; John A. Stewart and William Endicott, Jr., as Trustees; Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederick R. Coudert, as Receivers, and upon the replications to said answers respectively, and upon the proofs and exhibits in said cause, and the report thereon of William D. Cornish, Special Master, to whom said cause was referred by order dated April 5th, 1897, which report was filed in said cause on the 29th day of July, 1897, and upon all the papers and proceedings in said cause; and the complainants in said cause appeared by the Attorney-General and by Mr. George Hoadly, Special Assistant to the Attorney-General, and Mr. John C. Cowin, Special Counsel for the United States, and the defendants hereinbefore named appeared

by their respective solicitors and counsel, to-wit: The Union Pacific Railway Company by Mr. William R. Kelly, its solicitor; Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederick R. Coudert, Receivers, by Mr. William R. Kelly, their solicitor; Henry M. Alexander and John F. Dillon, as Trustees, by Mr. Charles C. Deming, their solicitor, and John A. Stewart and John F. Dillon, as Trustees, and John A. Stewart and William Endicott, Jr., as Trustees, by Mr. Edward W. Sheldon, their solici-
6057 tor; Russell Sage and George J. Gould, as Trustees, by Messrs. Rossington, Smith & Dallas, and Mr. Winslow S. Pierce, their solicitors; Mercantile Trust Company, as Trustee, by Mr. William W. Green, as counsel; The American Loan & Trust Company, Trustee, by Mr. Charles Blood Smith and Mr. Elmer P. Howe, their solicitors; and said cause having been argued by counsel, and the Court being fully advised in the premises, it is—

Ordered, adjudged and decreed:

1. That each and every exception taken to the report of William D. Cornish, Special Master, to whom this cause was referred by order herein dated April 5, 1895 (which said report was filed in this cause upon the 30th day of July, 1897,) be and the same is over-ruled and disallowed, and said report is in all respects approved and confirmed, to which action of the Court in over-ruling the said exceptions to said report, taken by the said complainants, (and each of them,) the complainants now except.

2. And it is further considered by the Court, upon the pleadings and proofs, that the equity of the cause is with the complainants, and that they are entitled to the relief sought by their bill, so far as not otherwise held by said Master in his report so as aforesaid confirmed and approved.

That the United States of America duly instituted this suit and became parties complainants in this cause by action of the Attorney-General of the United States duly had and taken on their behalf, pursuant to the authority provided by law and given by the direction of the President of the United States.

3. That the Union Pacific Railroad Company was duly in-
6058 corporated and organized under and by virtue of an Act of Congress of the United States, entitled "An Act to aid in the construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1st, 1862; also, an Act of Congress amendatory thereof, approved July 2nd, 1864, and other Acts of the Congress of the United States amendatory thereof and supplemental thereto.

4. That by the ninth section of the said Act of Congress approved July 1st, 1862, the Leavenworth, Pawnee & Western Railroad Company, a corporation duly incorporated by the territorial law of the Territory of Kansas, was authorized to construct a railroad and telegraph line from the Missouri River at the mouth of the Kansas River

on the south side thereof so as to connect with the Pacific Railroad of Missouri, to a point on the one hundredth meridian of longitude west from Greenwich, as in said Act provided, upon terms and conditions specified in said Act, and to meet and connect with the railroad and telegraph line of the Union Pacific Railroad Company, described in said Act, at the one hundredth meridian of west longitude aforesaid.

5. That in pursuance of legislative authority conferred by the laws of Kansas, the name of the Leavenworth, Pawnee and Western Railroad Company was changed, by the stockholders of said company, on June 6th, 1863, to, and from that time said company became in law and in fact known as The Union Pacific Railway Company, Eastern Division; that afterwards, in pursuance to a joint resolution of Congress, approved April 10, 1869, the name and title of said company was changed to the Kansas Pacific Railway Company; and that afterwards, by force and effect of the 16th section of said Act of July 2, 1864, giving power to the Union Pacific Railroad Company and to the other companies described in said Acts, (one of which was the said Union Pacific Railway Company, Eastern Division, afterwards called the Kansas Pacific Railway Company), to unite and consolidate their organizations, in manner and form as described in said act, The Union Pacific Railway Company was, on the 26th day of January, 1880, created by the consolidation, in the manner provided by the said acts of July 1, 1862, and July 2, 1864, of said Union Pacific Railroad Company, said Kansas Pacific Railway Company, and the Denver Pacific Railway & Telegraph Company, the latter being a corporation organized under the laws of the Territory of Colorado, which said companies are named and described in the Acts of Congress aforesaid; and that said The Union Pacific Railway Company so created by said consolidation thereupon became and is successor to each and all of said constituent companies, and thereby invested with all the rights, titles, properties and franchises of each of said companies, including said Kansas Pacific Railway Company.

6. That in and by the second section of said Act of Congress, approved July 1st, 1862, entitled

"An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes,"

it was provided, among other things, that the said corporation created by said act (being The Union Pacific Railroad Company) should be authorized and empowered to lay out, construct, furnish, maintain and enjoy a continuous railroad and telegraph, with the appurtenances, from a point in the one hundreth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River, and the north margin of the valley of the Platte River, in the territory of Nebraska to the west boundary of Nevada territory, which point on the one hundredth meridian

west from Greenwich is the same point as in said act was provided as the eastern terminus of the Union Pacific Railroad aforesaid.

7. That by the fifth and other sections of said Act of Congress approved July 1st, 1862, and Acts amendatory thereto it was provided that upon the certificate in writing of commissioners appointed by the President of the United States, as in said Acts provided, of the completion and equipment from time to time of sections of twenty consecutive miles each of said railroad and telegraph in accordance with the provisions of said Act, the Secretary of the Treasury should for each such section issue to the said company bonds of the United States of $1,000 each, payable in thirty years after date, bearing six per cent. per annum interest, said interest payable semiannually, to the amount of sixteen of said bonds per mile for each said section of twenty miles, and to secure the re-payment to the United States of said bonds so issued and delivered to the said company, together with all interest thereon, which should be paid by the United
6061 States, the issue and delivery of said bonds to the company should, ipso facto, constitute a lien upon the railroad and telegraph of said company, together with the rolling stock, fixtures, franchises and property of every kind and description, and in consideration of which said bonds might be issued.

8. By the sixth section of the said Act it was further provided that the grants aforesaid were made upon the condition that said company should pay said bonds at maturity, and keep said railroad and telegraph line in repair and use, and should at all times transmit messages over the said telegraph line and transport mails, troops and munitions of war, and supplies and public stores upon said railroad, for the Government, whenever required so to do, by any department thereof, and that the Government of the United States should, at all times, have preference in the use of the same for all purposes aforesaid, at fair and reasonable rates of compensation not to exceed the amounts paid by private parties for the same kind of service, and that all compensation for services rendered the Government should be applied to the payment of said bonds and interest until the whole amount thereof should be fully paid; and further that in and by the terms of the tenth section of said amendatory act approved July 2, 1864, the fifth section of the original act approved July 1, 1862, was so modified and amended, that The Union Pacific Railway Company, Eastern Division, might, upon completion of each section of said road, as provided in said Act and the Act to which the same was an amendment, issue its first mortgage bonds on its railroad and telegraph line, to an amount not exceeding said bonds of the United States,
6062 and of even tenor, date, time of maturity, rate and character of interest with the bonds authorized to be issued by said United States to the railroad company, and that the lien of the United States bonds should be subordinate to that of said first mortgage and bonds of the railroad company thereby authorized to be issued on its railroad, property and equipments, and secured by said mortgage, except as to the provisions of the sixth section of the Act approved July 1, 1862, relating to the transmission of despatches and

the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States.

9. That by the Act of Congress, approved July 3d, 1866, entitled: "An Act to amend an Act entitled 'An Act to amend an Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes, approved July 1, 1862,' approved July 2, 1864," it was provided that said Union Pacific Railway Company, Eastern Division (afterwards known as the Kansas Pacific Railway Company), should be and was entitled to designate the general route of said road and to file a map thereof, and upon filing of said map showing the general route of said road, the lands along the entire line thereof, so far as the same might be designated, should be reserved from sale by order of the Secretary of the Interior, provided that said company should be entitled to only the same amount of the bonds of the United States to aid in the
6063 construction of its line of railroad and telegraph as it would have been entitled to, if it had connected its line of railroad with the Union Pacific Railroad on the one hundredth degree of west longitude as then required by law; and further, that if said railroad had been connected as aforesaid on the one hundredth degree of west longitude, the distance for which said Union Pacific Railway Company, Eastern Division, would have been entitled to receive subsidy bonds as aforesaid would have been three hundred and ninety-three 15-16 miles and no more.

10. That afterwards, in pursuance to law, said Union Pacific Railway Company, Eastern Division, afterwards known as the Kansas Pacific Railway Company, having first designated the general route of said railroad, and filed a map thereof as aforesaid, began, and the Kansas Pacific Railway Company completed, a line of railroad and telegraph from Kansas City in the State of Missouri at a connection with the Pacific Railroad of Missouri on the south side of the Missouri River at the mouth of the Kansas River, to Denver in the State of Colorado, with spurs to Wyandotte and at Detroit in Kansas, and that in pursuance of law, and upon the report of Commissioners appointed from time to time by the President of the United States, bonds of the United States, of the tenor and effect aforesaid as described in said Acts approved July 1st, 1862, and July 2, 1864, were issued to said Union Pacific Railway Company, Eastern Division, to the amount in all of $6,303,000, bearing interest at the rate of six per cent. per annum, payable semi-annually, to the holder thereof, as follows:

6064 $640,000 issued on the first day of November, 1865, the principal of which matured and grew due on the 1st day of November, 1895;

$352,000 issued on January 1, 1866; $368,000 issued on May 8, 1866; $320,000 issued on July 9, 1866; $400,000 issued on October 16, 1866, the principal of which matured and grew due on the first day of January, 1896.

$400,000 issued on January 23, 1867; $480,000 issued on May 6, 1867; $400,000 issued on June 10, 1867; $384,000 issued on August 13, 1867; $400,000 issued on September 20, 1867; $416,000 issued on October 26, 1867; $320,000 issued on December 3, 1867, the principal of which grew due and matured on January 1, 1897;

$480,000 issued on January 14, 1868; $400,000 issued on April 28, 1868; $320,000 issued on June 6, 1868; $223,000 issued on November 5, 1868; the principal of which will become due on January 1, 1898.

And that the issue of said bonds and their said delivery to said company did by force of law, ipso facto, constitute a mortgage lien subordinate only to the lien of any first mortgage bonds issued by said Union Pacific Railway Company, Eastern Division, or said Kansas Pacific Railway Company, under and by force of the tenth section of the Act of July 2, 1864, aforesaid, on the whole line of the railroad and telegraph from the State line dividing the States of Missouri and Kansas, westwardly for the distance of 393 15/16 miles, together with the equipment, fixtures, franchises and property of every kind and description of said company, and in consideration of which
6065 said bonds were issued, including the terminal property of said Railroad Company in the State of Missouri, hereinafter described, in favor of said complainants, to secure the payment at maturity of said bonds with interest thereon from the said dates of issuance until said dates of maturity, respectively, at the rate of six per cent. per annum.

11. The Court further finds, that in compliance with the mandate of said statutes, and by force of the agencies provided for that purpose by the said laws of the United States, large sums of money have been received by the United States, and credited to the said Kansas Pacific Railway Company, and to the said Union Pacific Railway Company, towards, and in partial reimbursement of the interest paid by the United States aforesaid, the whole amount of which payments were and amounted, on the thirty-first day of March, 1897, to the sum of $4,514,803.25, being a sum, however, much less than the amount of interest which had accumulated and been paid by the United States at the date of maturity of said subsidy lien bonds to the holders thereof.

12. The Court further finds that on the first day of April, 1897, the amount owing to the United States, including the amount due and the amount not due to them upon the account aforesaid, after making said credits in reimbursement for the payment by the United States of said Subsidy lien bonds and interest, amounted to the sum of $12,891,900.19.

13. The Court further finds that by the nonpayment of said bonds at maturity the condition of said Subsidy mortgage and lien
6066 has been broken, and that in pursuance to law the United States is entitled to a decree for the sale of said railroad and telegraph line extending from the State line between the States of Missouri and Kansas the distance of 393 15/16 miles westwardly to a point

upon said railroad, together with said spurs to Wyandotte and at Detroit, and the terminal railroad property in the State of Missouri, extending from the Union Depot or eastern terminus of said Kansas Pacific Railway Company, now called the Union Pacific Railway Company, Kansas Division, a distance of .51 of a mile west to the State boundary line dividing the States of Kansas and Missouri, which terminal properties and railways the Court finds to have accreted to and become a part of the said railway and subject to the lien of the United States the same as if bonds had been issued in aid of the construction thereof, through the agency of Commissioners appointed by the President of the United States and in pursuance of law as aforesaid; but the Court further finds that the said decree in favor of the United States for the sale of said railroad and telegraph line, equipment, and franchises with appurtenances, (which equipment subject to the lien of the United States amounts to the equal undivided nineteen per cent. of the total equipment owned by the Union Pacific Railway Company and used on all of its divisions and branches), is subject, however, to the preference in favor of the Government of the United States for the transmission of messages over the telegraph line and the transportation of mails, troops, and munitions of war, and supplies and public stores upon said railroad for the Government whenever required to do so by any department thereof, at fair and reasonable rates of compensation not to
6067 exceed the amounts payable by private parties for the same kind of service; also to the following rights and claims, the second, third and fourth of which, however, are also subject to the said preferential right of the Government last described, to wit:

(1) The title of the American Loan & Trust Company shown by the Equipment Trust Indenture of the Union Pacific Railway Company to said American Loan & Trust Company, dated October 1, 1887, to the extent and so far as said Indenture affects the portion of the equipment therein embraced and to the extent of the purchase money indebtedness as recited in said Indenture, and upon payment of which by said Union Pacific Railway Company, or some one for it, said last-named company will become and be the owners in full title and possessed of complete ownership of all the equipment described in said Equipment Trust Indenture, subject to said preferential right of the Government of the United States. The amount due upon said Equipment Trust Indenture was on April 1, 1897, the sum of $507,000.

(2.) The rights and lien of the holders of bonds secured by the mortgage made by said Union Pacific Railway Company, Eastern Division, August 1st, 1865, to Henry M. Alexander and John Edgar Thomson as Trustees. Henry M. Alexander and John F. Dillon are now the trustees under said mortgage. This mortgage describes and covers that portion of the railroad and telegraph and appurtenant property which extends from the eastern terminus thereof at a point in the State of Missouri .51 of a mile east of the Missouri-
6068 Kansas State line, to a point 140 miles westerly from said State line, the Wyandotte spur, and ten per cent. of the total equipment of the Union Pacific Railway Company.

The amount owing upon said mortgage is $2,486,575.61, together with interest at six per cent. from the first day of May, 1897, upon the sum of $2,441,600.

(3.) The rights and lien of the holders of bonds secured by the mortgage made by said Union Pacific Railway Company, Eastern Division, dated June 1, 1866, to John Edgar Thomson and Adolphus Meier as trustees. John F. Dillon and John A. Stewart are now the trustees under this mortgage. This mortgage describes and covers all of the Kansas Pacific Railway and telegraph line, with its franchises and appurtenances, between a point 140 miles west of the boundary line between the States of Missouri and Kansas and a point 393$\frac{5}{16}$ miles west of the same boundary line, a spur at Detroit, and nine per cent. of the total equipment of the Union Pacific Railway Company. The amount owing upon said mortgage is $4,689,590.10, together with interest at six per cent. from the first day of May, 1897, upon the sum of $4,550,560.

(4) The right of possession and lien of Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, who were in the year 1894 appointed Receivers of the property covered by said Subsidy lien, and other property, in a suit brought in this court by Russell Sage and George J. Gould as Trustees, to foreclose a mortgage made to them by the Kansas Pacific Railway Company and dated May 1, 1879. Said mortgage is junior and
6069 inferior to said Subsidy lien; but the said Receivers have been since 1894, and still are, in possession of and operating said railroad; and their rights and lien, to which the claim of the Government is subject, are only their right of possession, and their lien for the payment of any deficiency in operating expenses while managing said railroad, if the same should hereafter be found to exist and be allowed by the Court upon the settlement of their accounts.

14. It is therefore *ordered, adjudged and decreed*, that the sale to be made under the decree in this case shall be subject and subordinate to the lien of mortgages and rights of bondholders secured by the said several instruments hereinbefore declared to be prior in right to the Subsidy mortgage and lien of the United States, viz., to the title secured by said Indenture to the American Loan & Trust Company; the lien of the mortgage to said Henry M. Alexander and John F. Dillon, as Trustees, and the mortgage to said John A. Stewart and John F. Dillon, as Trustees, and the rights and possession of said Receivers; but shall cut off and carry to the purchaser the equity of redemption of said mortgagor company heretofore known as the Union Pacific Railway Company, Eastern Division, Kansas Pacific Railway Company, and the Union Pacific Railway Company, and of all persons under them, and shall vest in the purchaser good and complete title to the premises and railway described as aforesaid, beginning at the junction of the Missouri Pacific Railroad with the Union Pacific Railway in the city of Kansas City, Missouri, thence extending so as to include the railway and telegraph lines and all the appurtenances thereof, and the said spurs to Wyandotte

6070 and at Detroit, westwardly to a point on said railroad line 393$\frac{5}{8}$ miles west of the boundary line between the States of Missouri and Kansas aforesaid, but subject to the preferential right of the Government of the United States aforesaid for the transmission of telegraphic despatches and the transportation of mails, troops, and munitions of war, supplies and public stores aforesaid, and to the possession and rights of the Receivers in charge of said property.

15. That in addition to the sums hereinbefore found to be due from and owing by said defendant Railway Company, said Company is indebted in large sums, of which the payment is overdue, and it has made default in the payment thereof and is unable to pay the same and is wholly insolvent, and it is for the best interests of all concerned that the said railroad, telegraph and equipment, with the properties and franchises, rights, functions, immunities and appurtenances of the said railway company embraced in and covered by the Subsidy Mortgage and lien of the complainants, should be sold and that provision be made for the payment of the indebtedness of said railway company according to the respective liens and equities of the holders thereof. That the railroad, telegraph, appurtenances, rolling stock, equipment and other property and franchises, rights, functions, immunities and appurtenances of said defendant Railway Company embraced in said Subsidy Mortgage and lien in favor of the United States, are indivisible and so situated and are of such a nature that the same cannot be sold in parcels without great injury to all the parties in interest and that it is expedient that the same shall be sold as an entirety, as hereinbefore provided, subject to the
6071 rights of all prior mortgagees and incumbrances and said Receivers, hereinbefore described, but free and clear and discharged from all claims and rights, junior and subordinate, to those of the United States Subsidy Mortgage and lien.

16. *It is therefore further ordered, adjudged and decreed*, that the defendant The Union Pacific Railway Company pay, or cause to be paid, within twenty days after the entry of this Decree, into the Treasury of the United States of America, the amount which was due to the United States on the first day of April, A. D. 1897, that is to say, $11,468,900.19.

17. *It is further ordered, adjudged and decreed*, that in default of such payment by the defendant the said The Union Pacific Railway Company, or by some one claiming under it, or for its account, or by some of the defendants herein, within the time aforesaid, all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock and property of every kind and description embraced in and covered by said Subsidy Mortgage and lien to the United States, shall be sold as hereinafter directed, and all the right title, estate, interest and equity of redemption of the said defendant The Union Pacific Railway Company and of all persons claiming, or to claim under it, and of each and every defendant in this cause, except the prior incumbrancers and

title and lien holders hereinbefore described, viz., those claiming under the American Loan & Trust Company Equipment Indenture, and under the said Mortgages to said Henry M. Alexander and John
F. Dillon as Trustees, and to said John A. Stewart and John
6072 F. Dillon as Trustees, respectively, and of said Receivers, respectively, of, in or to the said railroad, telegraph, franchises, rolling stock and property, and every part and parcel thereof, shall be forever absolutely barred and foreclosed, saving only the rights herein expressly excepted and reserved.

The said property, covered by and embraced in said Subsidy Mortgage and lien, as the same is herein described and defined, shall be sold upon the conditions and in the manner hereinafter provided and directed, at public auction to the highest bidder or bidders upon the mortgaged premises, at the station of The Union Pacific Railway Company in the City of Topeka in the State of Kansas, on a day or days to be fixed by the Special Master hereinafter appointed, and public notice of such sale and the time and place thereof, together with the manner and the terms upon which the said sale is to be conducted, shall be given by the said Special Master by advertisement, which shall describe briefly the property to be sold, the time and place when and where the sale is to take place, and the conditions upon which it is to be conducted; which advertisement shall be published at least once a week for the term of four successive weeks preceding the day of sale, in at least one newspaper in each of the following cities,—namely, New York City, New York; Kansas City, Missouri; Topeka, Kansas.

18. Said sale shall be made in the following manner and upon the following terms:

Said property shall be sold as an entirety and in one parcel.

The Special Master shall have the power and right to
6073 postpone the said sale from time to time, and may, without further notice, proceed with the said sale on any day to which the sale may have been adjourned, and may, at his option, give such further notice of sale, in addition to the notice above described, as he may think proper.

The Special Master shall receive no bid from any one offering to bid who shall not have deposited with him, at his office in Omaha, Nebraska, at least five days before the date of the sale mentioned in the Special Master's published notice, as a pledge that he will make good his bid in case of its acceptance, the sum of $500,000 in cash.

The Special Master shall accept no bid for said railroad, franchises and property less than the sum of $2,500,000 in cash, and unless such sum shall be bid, the Special Master may adjourn the sale and apply to the Court for further instructions.

Upon the acceptance of any bid, the person or persons making the same shall forthwith deposit with the Special Master, on account thereof, a further sum, in cash, which together with the amount which he or they have already deposited as a pledge shall equal fifteen per cent. (15%) of the accepted bid.

In case any bidder shall fail to make good his bid upon its acceptance by the Special Master by making within five days after such acceptance the additional deposit with the Master as hereinbefore provided, or, after the confirmation of said sale, shall fail to pay, as hereinafter provided, the balance due upon his said bid in consummation of his purchase, then the sums in cash so deposited by such bidder or purchaser, as hereinbefore provided, shall be for-
6074 feited as a penalty for such failure, and shall be applied towards payment of the expenses of a resale and towards making good any deficiency or loss in case the property shall be sold at a less price upon such resale, and to any other and further purposes which the Court may direct.

Any party to this cause or any holder or holders of First Mortgage bonds may bid and purchase at such sale.

If any sale for which a deposit has been made shall not be confirmed by the Court, such deposit shall be returned to the bidder, and the deposit of any unsuccessful bidder shall be returned to him when a bid has been accepted.

19. The purchaser whose bid shall have been accepted by the Special Master at said sale shall make payments in cash of the sum remaining due upon his said bid after the application thereto of the amounts theretofore deposited by him, as follows:

Twenty-five per cent. (25%) of said amount so remaining due on said bid shall be paid within thirty days after the confirmation of the sale; a further twenty-five per cent. (25%) of said amount shall be paid within forty days after such confirmation; a further twenty-five per cent. (25%) of said amount shall be paid within fifty days after such confirmation; and a further twenty-five per cent. (25%) of said amount shall be paid within sixty days after such confirmation: Provided, however, that the purchaser shall have the right to anticipate any or all of said payments by making the same, or any of them, at an earlier time, or earlier times, than herein fixed. The Master may accept a certified check upon, or a certificate of deposit of any national bank or trust company which is satisfac-
6075 tory to him, as a payment or a deposit of cash instead of money, in any case in which he is by the terms of this decree required to obtain cash.

The proceeds of the accepted bid shall be applied to the payment of the amount owing to the United States, whether due or not, secured by its said Subsidy nortgage and lien, until said Subsidy debt shall be paid in full, and the surplus, if any, shall be distributed by subsequent orders of the Court.

After the sale hereunder has been confirmed, the purchaser may pay the unpaid balance of his bid to the Master, or to the United States and the receipt of the Secretary of the Treasury, or his proper subordinate, for any part of such balance, shall be sufficient evidence of its payment, and after such confirmation the Master may pay to the United States any portion of the purchase price in his hands which is

applicable to the payment of the Subsidy lien and may take a like receipt therefor.

20. Upon the confirmation of such sale and conveyance of the premises sold, the purchaser or purchasers, his or their successors and assigns, shall, subject to the possession and rights of said Receivers and subject to the liens and rights of the prior mortgagees and encumbrancers hereinbefore mentioned, hold and enjoy the same and all the rights, privileges, immunities and franchises thereto appertaining. The purchaser or purchasers, and his or their successors or assigns, shall, subject to the possession and rights of said Receivers, and subject to the liens and rights of the prior mortgagees and encumbrancers hereinbefore mentioned, thereupon be entitled to have and to hold the said premises so conveyed by a full, absolute and indefeasi-
6076 ble title, freed and discharged from all the mortgages, liens, claims and charges of the Complainants herein and of each and every defendant herein, and of all the parties to this cause, saving and excepting the right of the United States Government to have the preference, at all times, in the use at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service, of the said telegraph line and railroad for the transmission of dispatches over said telegraph line and the transportation of mails, troops and munitions of war, supplies and public stores upon said railroad for the Government whenever required by any department thereof.

21. The defendant The Union Pacific Railway Company shall at the time of the execution of the said deed by said Special Master, as a further assurance to the purchaser or purchasers, execute its deed, or join with said Special Master in the execution of the deed to be made by him, and shall thereby convey and release to the purchaser or purchasers and his or their successors or assigns, all its right, title and interest in and to the property conveyed by said Special Master to the said purchaser or purchasers. And said Railway Company shall also execute and deliver to said purchaser, or purchasers, or to his or their assigns, and shall unite in the execution and delivery of such further, separate and specific deeds and conveyances of lands, lots or other property, of which the title shall be held by or for it, described in the Master's report, hereby confirmed, as shall be by said Special Master approved as necessary or proper to complete or assure the title of the purchaser, or to complete or facilitate the record evi-
dence thereof.

6077 22. The purchaser or purchasers, or his or their successors and assigns, shall, as part consideration and purchase price of the property purchased, and in addition to the sums heretofore required to be paid, take the same and receive the deed therefor upon the express condition that he or they, or his or their successors or assigns shall pay, satisfy and discharge

First: All the proper costs of this cause and of the expenses of the sale hereunder, including the compensation and necessary expenses of the Special Master appointed to make the sale.

Second: The charges, compensation, allowances and disbursements of the Complainants and any of the other parties to this cause, entitled thereto, their solicitors and counsel.

The costs, compensation, allowances and disbursements specified in this article shall be paid by the purchasers when they are fixed by the Court. The purchaser, his successors or assigns, shall pay any of the claims described in this order when by it required, or shall pay to the Special Master or into Court the moneys required to discharge the same from time to time, as the Court may direct. And this Court reserves the right and retains the power and jurisdiction to take back and resell the said property in case the purchaser, his successors or assigns, fail to pay any of said claims, when by it required, and in case he or they fail to pay any other part of the purchase price of this property.

23. It is further *ordered, adjudged and decreed*, that upon payment of the purchase price by the purchaser or purchasers of
6078 said property, the said Special Master making the sale shall execute and deliver a good and sufficient deed conveying all the said railroad, telegraph, rolling stock and property of every kind and description, herein ordered to be sold subject to the prior liens and exceptions hereinbefore found, together with all the franchises, rights, functions, immunities and appurtenances belonging to the said premises, to such purchaser or purchasers, or his or their successors and assigns.

From the time when by the order of this Court the said Receivers deliver the possession of the said premises and property to such purchaser, his or their successors and assigns, he or they shall have, receive, hold and enjoy all the earnings, income and proceeds of the operation, use or disposition thereof, and all compensation for the transmission of despatches over said telegraph line and the transportation of any persons or property over said railroad for any persons, party or corporation including the Government of the United States.

25. It is further *ordered, adjudged and decreed* That William D. Cornish be, and he is hereby, appointed Special Master to execute this Decree and make the sales herein provided to be made, and to execute and deliver the deeds of conveyance of the property sold to the purchaser or purchasers thereof upon confirmation of said sales and payment of the purchase prices thereof, as herein provided, and this Court reserves the right at any time to appoint another Master with the same powers as the one herein appointed, in case of the inability for any reason of the Special Master herein appointed to act or perform the duties of his office or in reference to his office. As soon as
any sales have been made by such Special Master in pursuance
6079 of this Decree, he shall report the same to this Court for confirmation, and shall from time to time thereafter make such further and supplemental reports as shall be necessary to keep the Court and the parties to this cause properly advised of his proceedings in the execution of this Decree.

26. It is further ordered, adjudged and decreed, that all the rights of the complainants, the United States, not disposed of by this decree are hereby reserved to them, and that all questions not hereby disposed of, including the discharge of the Receivers and the statement and settlement of their accounts, are hereby reserved by this Court for its future adjudication; and that any party to this cause may at any time apply to this Court at the foot of this Decree for further relief in respect to matters not herein specifically provided for.

WALTER H. SANBORN,
U. S. Circuit Judge, Eighth Judicial District.

6080 Mr. LOVETT. It is further stipulated that an ancillary bill of foreclosure was filed by the Government of the United States, and an ancillary decree of foreclosure therein, substantially in the form of Defendants' Exhibit 21, was duly filed and rendered in the United States Circuit Court for the Western District of Missouri.

It is further stipulated that, on the 16th day of February, 1898, pursuant to the decree of foreclosure in favor of the United States of America, as set forth in Defendants' Exhibit 21, the property covered thereby was sold by Special Master to Winslow S. Pierce and Alvin W. Krech for $6,303,000, and the said sale was duly reported to the Court by the Special Master making the same.

I now offer Defendants' Exhibit 22, being copy of the decree dated February 17, 1897, confirming the said sale.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 22 is as follows:

DEFENDANTS' EXHIBIT 22.

United States Circuit Court, For the District of Kansas.

THE UNITED STATES OF AMERICA, COMPLAINANT,

against

THE UNION PACIFIC RAILWAY COMPANY, ET AL, DEFENDANTS.

6081 Upon motion of Winslow S. Pierce and Alvin W. Krech, appearing by Lawrence Greer, their solicitor, and the complainant and each and every defendant consenting by stipulation annexed hereto, and the Court being duly advised in the premises, *it is ordered:*

That the Special Master's report of sale filed herein on the 16th day of February, 1898, be and it is hereby in all things ratified, approved and confirmed, and that said sale therein reported is hereby made absolute, subject, however, to all the terms and conditions of

the said decree and to the due performance by the purchasers, or their successors or assigns, of all the obligations therein prescribed.

Dated February 17, 1898.

WALTER H. SANBORN,
Circuit Court Judge.
JNO. WILLIAMS, *Judge.*

Mr. LOVETT. I now offer in evidence Defendants' Exhibit 23, being copy of second report of sale made by the Special Master in the foreclosure suit of the United States against the Union Pacific, Union Division, in the Circuit Court of the United States for the District of Kansas, dated May 12, 1898, together with Exhibits A and B thereto. I do not offer Exhibits C and D, because C is a copy of the instrument executed by Winslow S. Pierce and Alvin W. Krech, Purchasing Trustees, assigning their bid to the Union Pacific Railroad Company, and D is a copy of the deed of the Special Master to the Union Pacific Railroad Company which instruments will be separately introduced as Defendants' Exhibits — and —, respectively.

Defendants' Exhibit 23 is as follows:

6082 DEFENDANTS' EXHIBIT 23.

In the Circuit Court of the United States for the District of Kansas.

UNITED STATES OF AMERICA, COMPLAINANT,
against
UNION PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

SECOND REPORT OF WM. D. CORNISH, SPECIAL MASTER, UNDER DECREE OF FORECLOSURE HEREIN.

To the Honorable the Circuit Court of the United States for the District and in the cause above entitled.

I hereby respectfully report that Winslow S. Pierce and Alvin W. Krech, purchasers, have paid the full amount of six million three hundred and three thousand dollars ($6,303,000) the amount of the bid made by them at the sale of the railroad franchises and property described in the final decree herein, made by me on February 16, 1898, which sale was reported by me herein, under date of February 16, 1898, and confirmed by the order of court entered herein on February 18, 1898, and that such sum has been paid and applied at the times and in the manner as follows:

First. As reported by me in my first report upon said sale there was deposited with me more than five days before said February 16, 1898, to qualify said purchasers to bid at said sale, a certified check for $500,000, and there was also depo-ited with me by said purchasers upon the acceptance of their bid by me a further certified check in the sum of $500,000.

6083 Complying with the request of the Secretary of the Treasury as to the manner in which said sum should be paid over to the United States, I deposited said checks, in the aggregate amount of one million dollars, in the subtreasury of the United States at New York to the credit of the Treasurer of the United States on March 2, 1898, and thereupon received the receipt of the Secretary of the Treasury therefor, which receipt was dated March 4, 1898, and a copy thereof is hereto attached and marked Exhibit A.

Second. On March 19, 1898, said purchasers paid into the Treasury of the United States on account of their said bid for said property, the sum of $1,325,750, by depositing the same, under the instructions of the Secretary of the Treasury, in the subtreasury at New York to the credit of the Treasurer of the United States.

On March 29, 1898, said purchasers paid into the Treasury of the United States on account of their said bid for said property, the sum of $1,325,750, by depositing the same, under the instructions of the Secretary of the Treasury, in the subtreasury at New York to the credit of the Treasurer of the United States.

On April 8, 1898, said purchasers paid into the Treasury of the United States on account of their said bid for said property, the sum of $1,325,750, by depositing the same, under the instructions of the Secretary of the Treasury, in the subtreasury at New York to the credit of the Treasurer of the United States.

6084 On April 18, 1898, said purchasers paid into the Treasury of the United States on account of their said bid for said property, the sum of $1,325,750, by depositing the same, under the instructions of the Secretary of the Treasury in the subtreasury at New York to the credit of the Treasurer of the United States.

Said purchasers having completed the payment of their bid the Secretary of the Treasury issued to me his receipt acknowledging the payment of the said several sums made by said purchasers to the said Treasurer as aforesaid in the aggregate amount of $5,303,000, a copy of which receipt is hereto attached and marked Exhibit B.

Third: The payment into the Treasury of the United States of the several sums above specified amounting in the aggregate to the sum of $6,303,000, the amount bid by said purchasers at said sale, is in full payment of the bid of said purchasers, and constitutes a full compliance with the requirements of the decree of foreclosure and the order confirming said sale herein as respects the payment of their said bid.

Fourth: I further report that said Winslow S. Pierce and Alvin W. Krech, purchasers, have assigned and transferred their said bid, and all their right as bidders and purchasers at said sale of said railroad, franchises and property, to the Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah, as appears by the counterpart original of such assignment which has been exhibited to me, and is hereto attached and marked Exhibit C.

Fifth: I further report that it appearing that said purchasers have complied with all the conditions of said decree
6085 of foreclosure, and the order of court confirming the sale thereunder, and that said Union Pacific Railroad Company as the assignee of said purchasers is entitled thereto, I have, under the authority of said decree of foreclosure, and in compliance with the requirements thereof, made, executed, acknowledged and delivered to said Union Pacific Railroad Company, my deed as Special Master of the railroad, franchises and property sold by me under said decree of foreclosure as hereinbefore reported by me, which deed is in the form and contains the provisions and bears date as shown in a copy thereof hereto attached and marked Exhibit D. And I have so executed and delivered twenty counterpart originals of said deed for convenience and purposes of record of the same.

Sixth: I further report that I have performed all the duties imposed upon me as Special Master appointed to make the sale under the decree of foreclosure herein, and that all of the proceeds of the said sale have been paid over to and accepted by the complainant herein, and that no money derived from said sale remains in my possession herein.

Respectfully submitted.

WM. D. CORNISH, *Special Master.*

Dated May 12, 1898.

6086 EXHIBIT A (OF DEFENDANTS' EXHIBIT 23).

In the Circuit Court of the United States for the District of Kansas.

UNITED STATES OF AMERICA, COMPLAINANT,
vs. No. 7414.
UNION PACIFIC RY. CO., ET AL., DEFENDANTS.

To Wm. D. Cornish, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by you as Special Master in the above entitled cause, to the United States of America, of the sum of one million dollars ($1,000,000) money deposited with you by Winslow S. Pierce and Alvin W. Krech as purchasers under the sale of the property of the Union Pacific Railway Company, Kansas Division, made on February 16, 1898, upon the subsidy lien of the United States adjudged upon in the final decrees of foreclosure herein, which sum so paid by you is to be applied in part payment of the purchase price at which said property was struck off at said sale.

This payment has been made by you under the instructions of this department by depositing the said amount in the sub-treasury at New York on March 2, 1898, as shown by certificate of C. N. Jordan, Assistant Treasurer, dated March 2, 1898, No. 1039, in name

of William D. Cornish, Special Master, the original of which has been duly received at the department.

L. J. GAGE,
Secretary of the Treasury.

Dated March 4, 1898.

6087 EXHIBIT B (OF DEFENDANTS' EXHIBIT 23).

Circuit Court of the United States for District of Missouri and Kansas.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
UNION PACIFIC RAILWAY CO., ET AL., DEFENDANTS.

To Wm. D. Cornish, Special Master in the above entitled cause:

Receipt is hereby acknowledged of the payment by Winslow S. Pierce and Alvin W. Krech, purchasers in the above entitled cause, to the United States of America of the sum of five million, three hundred and three thousand dollars, as purchasers under the sale of the property of the Union Pacific Railway Company made February 16, 1898, upon the subsidy lien of the United States adjudged upon under the decrees herein, on account of and as part payment of the purchase price at which said property was struck off at said sale.

As instructed by this department the above sum of $5,303,000 was deposited in the Treasury of the United States by said Winslow S. Pierce and Alvin W. Krech, as follows:

$1,325,750, on March 19, 1898, as shown by Certificate No. 1106 issued by the sub-treasury at New York in duplicate, the original of which has been duly received at the department.

$1,325,750, on March 29, 1898, as shown by Certificate No. 1133 issued by the sub-treasury at New York in duplicate, the original of which has been duly received at the department.

$1,325,750, on April 8, 1898, as shown by Certificate No. 1173
6088 issued by the sub-treasury at New York in duplicate, the original of which has been duly received at the department.

$1,325,750, on April 18, 1898, as shown by Certificate No. 1207 issued by the sub-treasury at New York in duplicate, the original of which has been duly received at the department.

This receipt is made to enable you to make your report thereon in this cause.

L. J. GAGE,
Secretary of the Treasury.

Dated April 20, 1898.

It is stipulated that the foregoing copy of Special Master's Second Report of Sale in the case mentioned may be used as evidence with the same force and effect as the original, subject to correction; and also that exhibits C and D annexed thereto need not be introduced as part of the said report.

6089 Mr. LOVETT. I now offer Defendant's Exhibit 24, being Copy of Order Confirming Second report of sale made by the Special Master in the foreclosure suit of the United States against the Union Pacific Railway Company in the Circuit Court of the United States for the District of Kansas.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendant's Exhibit 24 is as follows:

DEFENDANTS' EXHIBIT 24.

In the Circuit Court of the United States for the District of Kansas.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
UNION PACIFIC RAILWAY COMPANY, ET AL., DEFENDANTS.

ORDER CONFIRMING SECOND REPORT OF WM. D. CORNISH, SPECIAL MASTER UNDER DECREE OF FORECLOSURE HEREIN.

Upon reading the second report of Wm. D. Cornish, Special Master appointed to make the sale under the decree of foreclosure herein, which report relates to the payment to the United States by Winslow S. Pierce and Alvin W. Krech, purchasers of the full sum of $6,303,-000, the purchase price for the railroad property, sold under the decree herein on February 16, 1908, as provided in an order of Court confirming said sale entered herein, and relating further to the assignment by said Winslow S. Pierce and Alvin W. Krech, Purchasers, of their said bid for said property and their rights there-
6090 under, to Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah, and to the execution and delivery by said Special Master and by the Union Pacific Railway Company and said purchasers to said Union Pacific Railroad Company, of the deed of conveyance of said railroad property sold herein as provided in said decree, and which report is dated May 12, 1898: and it appearing that the several parties in interest have consented to the confirmation of said report as appears by the stipulation of said parties attached thereto, it is

Ordered that the said report be filed herewith and that said report and the action of the Special Master herein therein reported be and the same is in all things hereby approved and confirmed.

WALTER H. SANBORN,
Circuit Judge.

Dated May 13, 1898.

Endorsed: No. 7414. Circuit Court of the United States for the District of Kansas. United States, Complainants, vs. The Union Pacific Railway Company, et al., Defendants. Second report of Wm. D. Cornish, Special Master, under decree of foreclosure herein, and order confirming.

Filed May 20, 1898.

GEO. F. SHARITT, *Clerk.*

6091 CONSENTS.

IN THE CIRCUIT COURT OF UNITED STATES FOR DISTRICT OF KANSAS.

UNITED STATES OF AMERICA, COMPLAINANT,

vs.

UNION PACIFIC RAILWAY COMPANY, ET AL., DEFENDANTS.

The undersigned, parties to the above entitled cause, hereby accept service of the report of the Special Master appointed by the decree of foreclosure heretofore entered in said cause, in which said report said Special Master reports the full payment of the purchase price as required by said decree, and the order confirming the sale thereunder, and the execution and delivery by him of the deed provided for by said decree, and the undersigned hereby consent that the said report may be confirmed by the above mentioned Court without further notice.

THE UNITED STATES OF AMERICA,
By JOHN C. COWIN, *Counsel.*

THE UNION PACIFIC RAILWAY COMPANY, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, *Receivers*,
By W. R. KELLY,
Their General Solicitor.

HENRY M. ALEXANDER and JOHN F. DILLON,
Trustees,
By CHARLES C. DEMING,
Their Solicitor.

THE MERCANTILE TRUST COMPANY,
Trustee,
By ALEXANDER & GREEN,
Its Solicitors.

6092 JOHN A. STEWART and JOHN F. DILLON,
Trustees,
and JOHN A. STEWART and WILLIAM ENDICOTT, JR.,
Trustees,
By EDWARD W. SHELDON,
Their Solicitor.

RUSSELL SAGE and GEORGE J. GOULD,
Trustees,
By ROSSINGTON, SMITH & DALLAS,
Their Solicitors.

THE AMERICAN LOAN & TRUST COMPANY,
Trustees,
By ELMER P. HOWE,
Its Solicitor.

Endorsed: Circuit Court of the United States for the District of Kansas. United States Complainants vs. The Union Pacific Railway Company, et al., Defendants. Second report of Wm. D. Cornish, Special Master, under decree of foreclosure herein. Filed May 20, 1898. Geo. F. Sharitt, clerk.

6093 Mr. LOVETT. I offer in evidence Defendants' Exhibit 25, being copy of the assignment by Winslow S. Pierce and Alvin W. Krech of their bid at the sale to the Union Pacific Railroad Company.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 25 is as follows:

DEFENDANTS' EXHIBIT 25.

(Kansas—Government.)

ASSIGNMENT OF BID.

Know all men by these Presents, That

Whereas, in a certain cause pending in the Circuit Court of the United States for the District of Kansas, in which the United States of America are complainants and The Union Pacific Railway Company, Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers; John A. Stewart and John F. Dillon, Trustees; Henry M. L. Alexander and John F. Dillon, Trustees; Russell Sage and George J. Gould, Trustees, The Mercantile Trust Company, Trustee; The American Loan and Trust Company, Trustee; and John A. Stewart and William Endicott, Jr. Trustees, are defendants, a certain decree of foreclosure and sale was entered by the said Court on the 30th day of July, 1897; and

Whereas, in a certain cause ancillary thereto and pending between the same parties in the Circuit Court of the United States for the Western District of Missouri, a certain decree was entered by said Court on the 30th day of July, 1897; by which said decree it was, among other things, adjudged and decreed that the decree

6094 rendered in said cause by the United States Circuit Court, for the District of Kansas, be rendered and pronounced as the decree of the said Court in said ancillary cause and should be executed upon the terms and conditions therein prescribed and that the execution of said decree rendered by said Circuit Court of the United States, for the District of Kansas, according to its terms and conditions should be deemed and held to be the execution of the decree of the said Court in said ancillary cause in all respects whatsoever; and

Whereas, by said decrees it was, among other things, adjudged and decreed that the said The Union Pacific Railway Company pay, or cause to be paid, within twenty days after the entry of said decrees into the Treasury of the United States of America the amount in said decrees found to be due and owing to said United States of

America and that in default of such payment within said time all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description embraced in and covered by the Subsidy Mortgage and Lien of the United States should be sold, as in said decree directed, as an entirety and in one parcel by William D. Cornish, the Special Master appointed by said decrees, at public auction, to the highest bidder or bidders, upon the mortgaged premises, at the station of The Union Pacific Railway Company in the City of Topeka, in the State of Kansas, on a day or days to be fixed by the said Special Master, after giving notice of said sale as in said decrees specified; and

Whereas, neither the said The Union Pacific Railway Company, nor any one for its account, nor any defendant in either of
6095 the said causes above mentioned made payment of the sum decreed as aforesaid or any part thereof within the time aforesaid, or at any other time; and

Whereas, the said Special Master in pursuance of said decrees, due notice having been given as therein prescribed and according to law, did duly sell at public auction upon the mortgaged premises at the freight station of The Union Pacific Railway Company in the City of Topeka in the State of Kansas, on the 16th day of February, 1898, all and singular all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, and also the estate and property of every kind and description embraced in and covered by the said Subsidy Mortgage and Lien of the United States (being all the premises, railroad and property of every kind and description mentioned in said decrees) to Winslow S. Pierce and Alvin W. Krech for the sum of $6,303,000, said Winslow S. Pierce and Alvin W. Krech being the highest and best bidders for said property at said sale, and having duly and seasonably qualified as bidders at said sale as required by said decrees in that behalf; and

Whereas the said Special Master did duly make and file his report of said sale in the said Courts, which said report and the sale therein reported have been, upon due notice, by orders of said courts, duly confirmed; and

Whereas the said Winslow S. Pierce and Alvin W. Krech, have in all respects to the date of these presents complied with the provisions of said decrees of foreclosure and sale and have completed the payment of the purchase price as required by said decrees and orders confirming said sale; and

6096 Whereas, in said decrees it is among other things provided that upon payment of the purchase price by the purchaser or purchasers of said property the said Special Master appointed by said decrees shall execute and deliver a good and sufficient deed conveying all the said railroad, telegraph, rolling stock and property of every kind and description in said decrees ordered to be sold, subject to the prior liens and exceptions in said decrees found, together with all the franchises, rights, functions, immunities and appurtenances belonging

to the said premises, to the purchasers or their successors and assigns; and

Whereas, The Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, is desirous of acquiring, and is authorized to acquire, the said bid or contract or purchase of said Winslow S. Pierce and Alvin W. Krech, and all their rights thereunder, including their right to receive a deed or deeds pursuant to the said decrees for the property, railroad and premises purchased by the said Winslow S. Pierce and Alvin W. Krech at the said sale; and the said Railroad Company has made, and has agreed to make, payment and provision for the payment for said property satisfactory to said Winslow S. Pierce and Alvin W. Krech, and has agreed to perform and assume all of the obligations required by said decrees and orders to be performed and assumed by said Winslow S. Pierce and Alvin W. Krech by reason of their said bid and purchase at said sale: Now therefore these presents witness:

That the undersigned Winslow S. Pierce and Alvin W. Krech, in consideration of the premises, and of other good and valuable consid-
erations, have sold, assigned, transferred and set over and
6097 hereby do sell, assign, transfer and set over unto said Union
Pacific Railroad Company, its successors and assigns, their said bid and their right to receive conveyance of the said railroad, franchises and property so purchased by them and all their other rights under said decrees or by virtue of their said bid and purchase, in and to said premises, being all the railroad, rolling stock, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging and also the estate and property of every kind and description embraced in and covered by the said Subsidy Mortgage and Lien of the United States (being all the premises, railroad and property of every kind and description mentioned in said decrees);

To have and to hold the same unto the said Union Pacific Railroad Company, its successors and assigns, to its and their own use forever, subject, however, to all the conditions, restrictions and reservations in said decree set forth, and subject, further, to the performance, in the manner set forth in said decrees, by the said Union Pacific Railroad Company, of all the acts and things required by said decrees to be performed by the said purchasers at said sale and now remaining unperformed, and said Winslow S. Pierce and Alvin W. Krech, do hereby direct and request that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers at said sale, or his or their successors or assigns, conveying and releasing said property as in said decrees provided, be made and delivered to said Union Pacific Railroad Company, its successors and assigns.

And these presents further witness that Union Pacific Railroad Company hereby accepts the foregoing assignment, and covenants
and agrees to pay, satisfy and discharge, and to indemnify and
6098 forever hold harmless said Winslow S. Pierce and Alvin W.
Krech, their executors and administrators from and against

any, and all losses, damages, expenses and liabilities whatsoever which may have been incurred, or hereafter may be incurred, by said Winslow S. Pierce and Alvin W. Krech or either of them by reason of their said bid and the acceptance thereof, or by reason of any acts and things required by said decrees or said orders confirming said sale to be performed by said Winslow S. Pierce and Alvin W. Krech.

Five originals of this instrument have been executed, each of which shall be deemed an original and all collectively as one instrument.

In witness whereof, the undersigned, Winslow S. Pierce and Alvin W. Krech, have hereunto set their hands and affixed their seals, and Union Pacific Railroad Company has caused these presents to be executed by its President and its corporate seal to be hereto affixed, attested by its Secretary, this 8th day of April, 1898.

WINSLOW S. PIERCE [SEAL]
ALVIN W. KRECH [SEAL]
Purchasers.

In the presence of:
LAWRENCE GREER.

UNION PACIFIC RAILROAD COMPANY,
[SEAL] By HORACE G. BURT,
President.

Attest:
ALEX. MILLAR,
Secretary.

6099 Mr. LOVETT. I now offer in evidence Defendants' Exhibit 26, being copy of deed from William D. Cornish, Special Master, and others, to the Union Pacific Railroad Company, dated April 19, 1898, conveying property sold under the decree of foreclosure in favor of the United States, above set forth, to Winslow S. Pierce and Alvin W. Krech.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 26 is as follows:

DEFENDANTS' EXHIBIT 26.

Indenture, made the 19th day of April, A. D. 1898, between

William D. Cornish, of St. Paul, Minnesota, as Special Master appointed by the decrees entered in the causes hereinafter mentioned by the Circuit Courts of the United States for the District of Kansas, and the Western District of Missouri—party of the first part;

The Union Pacific Railway Company, a corporation formed by the consolidation of The Union Pacific Railroad Company, with the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company,—party of the second part;

Winslow S. Pierce and Alvin W. Krech, both of the City of New York,—parties of the third part; and

Union Pacific Railroad Company, being a new corporation or body politic and corporate organized and existing under and pursuant to the laws of the State of Utah,—party of the fourth part;

Whereas, the Leavenworth, Pawnee and Western Railroad
6100 Company, was duly incorporated and organized under and by virtue of an Act of the Legislature of the Territory of Kansas, enacted in the year 1853, and entitled "An Act to incorporate the Leavenworth, Pawnee and Western Railroad Company," and an Act supplemental thereto, approved February 23d, 1857; and

Whereas, said last-named company was by the legislation aforesaid authorized to locate and construct a railroad from the west bank of the Missouri River in the town of Leavenworth, Kansas, and from thence west to the town of Pawnee or some point feasible and near to the Government Reservation of Fort Riley, with the privilege of extending the same to the western boundary of the then territory of Kansas and to construct a branch road to the town of Kickapoo on the Missouri River; and

Whereas, said last-named Company was by an Act of the Congress of the United States entitled "An Act to aid in the Construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military and other purposes," approved July 1st, 1862, authorized to construct a railroad and telegraph line from the Missouri River at the mouth of the Kansas River on the south side thereof so as to connect with the Pacific Railroad of Missouri at a point on the 100th meridian of Longitude west from Greenwich; and

Whereas, on or about June 6th, 1863, the name of said last-named company was, under authority of an Act of the Legislature of the State of Kansas entitled "An Act relating to Railroad Companies," approved March 5th, 1862, changed from that of Leavenworth, Pawnee and Western Railroad Company to that of Union
6101 Pacific Railway Company, Eastern Division; and

Whereas, in the year 1869 said Union Pacific Railway Company, Eastern Division, pursuant to due corporate action and as thereto authorized by law, changed its name to that of the Kansas Pacific Railway Company; and

Whereas, in pursuance of law, said Union Pacific Railway Company, Eastern Division (being the same company as the one afterwards known as Kansas Pacific Railway Company), having first designated the general route of said railroad and filed a map thereof, began, and the said Kansas Pacific Railway Company completed, a line of railroad and telegraph from Kansas City in the State of Missouri, at a connection with the Pacific Railroad of Missouri, on the south side of the Missouri River at the mouth of the Kansas River to Denver in the State of Colorado, with spurs to Wyandotte and at Detroit in Kansas, as, in the manner, and upon the conditions, within the times, and upon the provisions and consents contemplated, defined and prescribed in said legislation; and

Whereas, The Union Pacific Railway Company, party hereto of the second part, was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several Acts of the Congress of the United States, by the consolidation of The Union Pacific Railroad Company, and the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, and said The Union Pacific Railway Company, so created, became the successor to each and all of the said constituent Companies, and became vested with all the rights, titles, interest, lands and land grants, railroads, properties and franchises of each and all of the said constituent Companies; and

6102 Whereas, the United States of America, under and pursuant to the said Acts of Congress, issued and delivered to said Union Pacific Railway Company, Eastern Division, bonds of the United States, termed subsidy bonds, amounting to the principal sum of $6,303,000, all of the tenor and effect described in the said Acts of Congress, which created and constituted ipso facto a mortgage and lien, as in said Acts of Congress provided (which mortgage and lien are hereinafter termed the "Subsidy Lien"), in favor of the United States, to secure the repayment to the United States of the amount of said Subsidy Bonds so issued and delivered to said Union Pacific Railway Company, Eastern Division, together with all interest thereon which should have been paid by the United States, upon the whole line of railroad and telegraph, from the State Line dividing the States of Missouri and Kansas, westwardly for the distance of 393$\frac{5}{6}$ miles, together with the equipment, fixtures, franchises and property of every kind and description, and in consideration of which said bonds were issued, including the terminal property of said Railroad Company in the State of Missouri, formerly belonging to the Union Pacific Railway Company, Eastern Division; and

Whereas, The Union Pacific Railway Company having made default in the repayment to the United States of the amount of the Subsidy Bonds issued and delivered to said Union Pacific Railway Company, Eastern Division, to the extent and in the manner specified in the decrees hereinafter referred to, the United States of America, by its Attorney-General, acting under the direction of the President of the United States, filed in the Circuit Court of the United

6103 States for the District of Kansas their bill in equity against The Union Pacific Railway Company, Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, receivers of The Union Pacific Railway Company, Henry M. Alexander and John F. Dillon, as trustees; John A. Stewart and John F. Dillon, as trustees; Russell Sage and George J. Gould, as trustees; The Mercantile Trust Company, as trustee; The American Loan and Trust Company, as trustee, and John A. Stewart and William Endicott, Jr., as trustees, defendants, to foreclose the Subsidy Lien of the United States, and such proceedings were had in said cause that on the 30th day of July, 1897, a certain decree of foreclosure and sale was entered by said Court, whereby it was adjudged

that the United States had a mortgage and lien upon all of the property hereinafter more particularly described as having been sold by the Master and by this indenture conveyed, as shown in the said decree; and said The Union Pacific Railway Company, party hereto of the second part, was adjudged and decreed to pay, or cause to be paid within twenty days after the entry of the said decree, into the Treasury of the United States of America, the sum of $11,468,900.19, and that, in default of such payment by The Union Pacific Railway Company, or by some one claiming under it, or by some one for its account, or by some of the defendants in said cause, within the time aforesaid, all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock and property of every kind and description mentioned in the said decrees and embraced in and covered by the said Subsidy Mortgage and Lien to the United States, be sold, and all the right, title, estate, interest and equity of redemption of the said The Union Pa-
6104 cific Railway Company and of all persons claiming or to claim under it, and of all the parties to said cause, except the prior incumbrancers and title and lien holders in said decree described, viz., those claiming under the American Loan and Trust Company Equipment Trust Indenture, and under the mortgages to said Henry M. Alexander and John F. Dillon, as Trustees, and to said John A. Stewart and John F. Dillon, as Trustees, and of said Receivers respectively of, in or to the said railroad, telegraph, franchises, rolling stock and property, and every part and parcel thereof, embraced in said Subsidy Lien and Mortgage, be forever absolutely barred and foreclosed, saving only the rights in said decree expressly excepted and reserved; and

Whereas, a similar and auxiliary bill of the same character and effect was filed by the United States of America against the same defendants in the Circuit Court of the United States for the Western District of Missouri, in which District a portion of the premises, property and franchises embraced in said Subsidy Lien was situate; and said decree entered by the Circuit Court of the United States for the District of Kansas on the 30th day of July, 1897, was adopted, rendered and announced as the decree of said Circuit Court of the United States for the Western District of Missouri in said similar and auxiliary cause therein pending, by decree entered by said Court on the 30th day of July, 1897—to which said suits and to the proceedings and record thereof in each of the said Courts reference is hereby made; and

Whereas, neither The Union Pacific Railway Company, nor any one claiming under it, nor any one for its account, nor any defendant in either of the said causes above mentioned, made payment of
6105 the sum decreed as aforesaid, or any part thereof, within the time aforesaid or at any other time; and

Whereas, William D. Cornish, the party of the first part hereto, was, in and by the said decree of the Circuit Court of the United States for the District of Kansas, and in and by said ancillary decree

of the United States Circuit Court for the Western District of Missouri, appointed Special Master to execute said decrees and make the sale therein provided to be made, and to execute and deliver the deeds of conveyance to the purchaser or purchasers thereof upon confirmation of such sale and payment of the purchase price thereof as in said decrees provided; and

Whereas, the party of the first part gave due notice of the time and place of the sale pursuant to the said decrees and according to law, and complied in all respects with the provisions of said decrees relating to the sale thereby decreed and directed; and, in pursuance of the said decrees, at the place therein specified—to wit, at the station of The Union Pacific Railway Company, in the City of Topeka, in the State of Kansas—did duly sell at public auction on the 16th day of February, 1898, to Winslow S. Pierce and Alvin W. Krech, the highest and best bidders at said sale, all and singular the premises, railroads and property of every kind and description mentioned in the said decrees, and embraced in and covered by the Subsidy Lien of the United States as determined and defined in said decrees, at and for the sum of six million three hundred and three thousand dollars ($6,303,000); and

Whereas, afterwards, William D. Cornish, Special Master as aforesaid, did duly make and file his report of said sale to the said Courts, and, by decrees entered by said Circuit Courts of the
6106 United States in said causes therein pending respectively, the said report of said sale was in all things ratified, approved and confirmed and the sale therein reported made absolute, subject to all the terms and conditions of said decrees of foreclosure and sale and to the due performance by the purchasers or their successors or assigns of all the obligations therein prescribed; and

Whereas, said Winslow S. Pierce and Alvin W. Krech, the parties of the third part hereto, have in all respects complied with the provisions of the said decrees of foreclosure and sale and have paid and made settlement of the purchase price as provided in said decrees and the orders of said Courts; and

Whereas, the said purchasers have duly sold, assigned, transferred and set over to Union Pacific Railroad Company, the party of the fourth part to this Indenture, their said bid and their right to receive a deed, pursuant to the said decrees and sale, for the property, railroad and premises purchased by them at the Special Master's sale aforesaid.

Now, therefore, this Indenture witnesseth:

That the said William D. Cornish, Special Master as aforesaid, party of the first part to these presents, in order to carry into effect the said sale made by him as aforesaid, and in pursuance of the aforesaid decrees, and in conformity to law, and in consideration of the premises, and in consideration of the payments aforesaid, hath granted, bargained, sold, assigned, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, release, convey and confirm, unto Union Pacific Railroad Company, the party

of the fourth part hereto, and to its successors and assigns, in
6107 fee simple, forever, all and singular all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock and property of every kind and description embraced in and covered by the Subsidy Mortgage and Lien of the United States, as in said decrees and in the Special Master's Report found and described as follows, viz.:

The railroad, railroad right of way and railroad property of The Union Pacific Railway Company, commencing at a point where the same connects with the tracks of the Union Depot Company in Kansas City, Missouri, about fifty-one one hundredths of a mile east of the State line between the States of Missouri and Kansas, and extending westerly through the Counties of Wyandotte, Leavenworth, Douglas, Jefferson, Shawnee, Pottawattamie, Riley, Geary, Dickinson, Saline, Ellsworth, Russell, Ellis, Trego, Gove and Logan, in the State of Kansas, to a point 393.9425 miles, measured along the line of said railroad, from said State line between the States of Kansas and Missouri, including a spur or branch line extending from the point of junction with the main line at a point about sixteen one hundredths of a mile east of Armstrong, Kansas, in a north-easterly direction to a terminus near the corner of Water and Freeman Streets, in Wyandotte, Kansas, two and eight hundredths miles, and a spur or branch line extending from a junction point with the main line at a point about nineteen one hundredths of a mile east of Detroit, Kansas, in a southerly direction one and ninety-five hundredths miles, in all constituting a total length of main track of three hundred and ninety-eight and forty-eight hundredths miles, of which main track three and thirty-one hundredths miles is a double-track rail-
6108 road; also the lots, yards, terminal grounds, shop grounds, station grounds, streets, alleys and other tracts of land owned, acquired or appropriated by or for the use of the said The Union Pacific Railway Company, or said Railway Companies to whose rights and property said The Union Pacific Railway succeeded, for the purposes of its said line of railroad; also the shops, freight depots, office buildings, round houses and other structures and facilities upon said premises, constructed or acquired for or used for the purposes of or in connection with said railway property; also the right of way, station, terminal and other grounds pertaining to or acquired for or used in connection with the properties of the said railroad along said line thereof, including lands, the title to which stands in the names of Trustees for said The Union Pacific Railway Company; also the depots, engine houses, car houses, station houses, warehouses, machine shops, work shops and other structures and facilities thereon or connected therewith, constructed, appropriated or used for or in connection with said line of railway for the operation thereof, and including all the lands and other property designated in the reports of the Special Master and referred to in said decrees and in the Schedules in said reports contained, hereby referred to and made a part hereof; also the switches, turnouts, sidings and spurs constructed for or used

in connection with said line of railway; also the lands and interests and easements in lands, pipes, pump houses, structures, pipe lines, appliances, water rights, facilities and easements of the said railway Company, pertaining to or connected with the water supply of said railway Company, upon or along said line of railroad; also the tools, appliances, fixtures, supplies and materials located on or along
6109 said line of railroad, or acquired or provided for use in connection therewith or for the purposes thereof; also the locomotives, passenger cars, Pullman sleeping cars, dining cars, freight cars and other cars, and the equipment and rolling stock, and all interest of said The Union Pacific Railway Company in equipment and rolling stock owned, acquired or provided by said Railway Company, for the purposes of said line of railroad, or necessary for the running and operation thereof, the same being nineteen per cent. of all such equipment and rolling stock and interest in equipment and rolling stock owned or acquired by said The Union Pacific Railway Company, also the line of telegraph, telegraph material, instruments, fixtures and appliances belonging to said Railway Company, and located upon and provided for and pertaining to said line of railway; also all furniture, fixtures, appliances, apparatus, supplies and material in the various offices of said Railway Company upon or remote from said line of Railway, including the principal offices of said Company at Omaha and Boston, owned, acquired or provided for use in connection with said division of said railway property; also the rights and property of the character as above described owned or provided for the common use of the several divisions of said Railway Company's property, to the extent of the proportionate use and devotion thereof to the business and concerns of the said division of said Railway Company's property; also the rights and interests of said The Union Pacific Railway Company in or to property of every kind and nature, whether of the character as hereinbefore described or otherwise, owned, acquired or provided for the use of said division of its said railway property; also the corporate rights and franchises
6110 of said The Union Pacific Railway Company, so far as they pertain to said division thereof.

To have and to hold all and singular the above-mentioned and described railroad, telegraph, rolling stock, franchises, and property, of every kind and description hereinbefore mentioned and conveyed, or intended to be conveyed, unto the said Union Pacific Railroad Company, party of the fourth part hereto, being the corporation organized and existing under and pursuant to the laws of the State of Utah, and to its successors and assigns forever, as fully and absolutely as the party of the first part may or ought by virtue of the said decrees to convey the same: *Saving and excepting* the right of the Government to have the preference at all times in the use, at fair and reasonable rates of compensation, to be paid to the party of the fourth part, not to exceed the amounts paid by private parties for the same kind of service, of said telegraph line and railroad, for the transmission of despatches over said telegraph line, and the trans-

portation of mails, troops and munitions of war, supplies and public stores upon said railroad, for the Government, whenever required by any department thereof;

And subject to and saving the title of The American Loan and Trust Company, shown by The Equipment Trust Indenture of The Union Pacific Railway Company to the said The American Loan and Trust Company, dated October 1st, 1887, to the extent and so far as the said indenture affects the portion of the equipment therein embraced which is adjudged in said decrees to pertain to said mortgaged premises, and to the extent of the purchase money indebtedness in said decrees found to be outstanding thereunder; and subject
6111 to and saving the lien of the First Mortgage of the Union Pacific Railway Company, Eastern Division, to John Edgar Thomson and Henry M. Alexander, as trustees, dated the first day of August, 1865, upon and in respect of the premises embraced in and covered by said First Mortgage, and to the extent of the indebtedness thereby secured and in said decrees found to be outstanding and unpaid; and subject to and saving, the lien of the First Mortgage, dated June 1, 1866, executed by said the Union Pacific Railway Company, Eastern Division, to John Edgar Thomson and Adolphus Meier, as Trustees, upon, to the extent, and in respect of, the premises embraced in the said First Mortgage as in said decrees described and defined; subject, also, to the possession and rights of the Receivers, as provided in said decrees; and saving and subject to all the title, estate, claim and rights of the purchasers, and the assigns of such purchasers and their successors, under a certain decree entered by the Circuit Court of the United States for the District of Kansas, on the 30th day of July, 1897, in a certain cause therein pending wherein John F. Dillon and Henry M. Alexander, Trustees, were complainants, and said The Union Pacific Railway Company and others were defendants, and under a certain decree entered by the Circuit Court of the United States for the District of Kansas in a certain cause therein pending wherein John A. Stewart and John F. Dillon, Trustees and others, were complainants and said The Union Pacific Railway Company and others were defendants, and under deeds bearing even date herewith, executed by the said William D. Cornish, as Special Master, and others pursuant to said decrees.

And subject also to the further express condition that the party hereto of the fourth part, its successors or assigns, shall
6112 as part consideration and purchase price of the property purchased and herein conveyed, and in addition to the sums required by said decrees to be paid, and paid, take the same, and receive this deed therefor upon the express condition that it or its successors or assigns shall, as provided in said decrees, pay, satisfy and discharge the obligations, liabilities and charges in said several decrees, specified as follows:

First. All the proper costs of said causes and of the expenses of the sale under said decrees, including the compensation and necessary expenses of the Special Master appointed to make the sale;

Second. The charges, compensation, allowances and disbursements of the complainants and any of the other parties to said causes entitled thereto, their solicitors and counsel;

And subject also to all other terms, conditions and reservations of each of the said decrees of foreclosure and sale and the decrees confirming the said sale entered in the United States Circuit Courts for the District of Kansas and the Western District of Missouri, respectively, whether in this indenture expressly referred to or not, including the reservation of the said Courts to retake and resell the premises herein conveyed in case the party of the fourth part to this indenture or its successors or assigns should fail to pay any of the claims required to be paid under the said decrees when by said Court required, or any other part of the purchase price of said property.

It being the true intent and purpose hereof to convey all the property and premises directed by the said decrees to be conveyed, whether the same are in this Indenture particularly described
6113 or not, subject to all prior mortgages, liens and incumbrances in said decrees found or established, and subject to all the reservations, conditions and terms in said decrees prescribed.

And this Indenture further witnesseth, that said The Union Pacific Railway Company, party hereto of the second part, for and in consideration of the premises and in pursuance of the said decrees and orders of the said Courts respectively, has bargained, sold, assigned, transferred, conveyed and released, and by these presents does bargain, sell, assign, transfer, convey and release unto the party hereto of the fourth part, all the right, title and interest of The Union Pacific Railway Company, party hereto of the second part, in and to the said railroad, rights, properties, functions, franchises, privileges and immunities which by the said decrees were ordered to be sold, and all the property described in the said decrees and therein ordered to be sold and herein conveyed, assigned, transferred or released by the party of the first part to this Indenture, as fully and absolutely as the said party of the second part hereto can or ought by virtue of the said decrees to convey the same; *to have and to hold* all and singular the said railroad, premises and property, real and personal, unto the said party of the fourth part hereto, its successors and assigns forever.

And this Indenture further witnesseth, that the said Winslow S. Pierce and Alvin W. Krech, being the purchasers at the said sale under the said decree of foreclosure of the said railroad, property and premises herein conveyed by the said Special Master, having assigned, transferred, and set over, as hereinbefore recited, unto the party
6114 of the fourth part their said bid and their right to receive conveyance of the railroad, franchises and other property purchased, and all their other rights under the said decrees, or by virtue of their said bid and purchase, do hereby join in the execution of this Indenture for the purpose of releasing and confirming, and they do hereby release and confirm unto the said Union Pacific Railroad Company, party hereto of the fourth part, and its successors and assigns forever all of their right, title and interest in and to the prop-

erty and premises in this Indenture conveyed and each and every part thereof.

It is understood that no personal covenant or liability shall be implied against the parties of the first and third parts, or either of them, by reason of the execution of this deed.

In order to facilitate the recording hereof, twenty originals of this indenture have been executed, acknowledged and delivered by the respective parties, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered, shall be deemed an original and all collectively but one instrument.

In witness whereof, the said parties hereto of the first and third parts, have hereunto set their hands and seals, and the parties of the second and fourth parts have caused these presents to be signed by their respective officers, duly authorized, and their respective corporate seals to be hereto affixed, and attested by their respective secretaries the day and year first above written.

WM. D. CORNISH. (SEAL) *Special Master.*

WINSLOW S. PIERCE. (SEAL)
ALVIN W. KRECH. (SEAL)
Purchasers.

6115 The UNION PACIFIC RAILWAY COMPANY,
By S. H. H. CLARK,
President.

(SEAL)
Attest:
ALEX. MILLAR,
Secretary.

UNION PACIFIC RAILROAD COMPANY,
By HORACE G. BURT,
President.

(SEAL)
Attest:
ALEX. MILLAR,
Secretary.

Signed, sealed and delivered by William D. Cornish, Winslow S. Pierce and Alvin W. Krech, in the presence of — EDWARD VAN INGEN. LAWRENCE GREER.

By S. H. H. Clark, President, in behalf of The Union Pacific Railway Company, in the presence of — HENRY G. HERBEL. E. L. SAYRE.

By Alex. Millar, Secretary, in behalf of The Union Pacific Railway Company, in the presence of — EDWARD VAN INGEN. LAWRENCE GREER.

By Alex. Millar, Secretary, in behalf of Union Pacific Railroad Company, in the presence of — EDWARD VAN INGEN. LAWRENCE GREER.

By Horace G. Burt, President, in behalf of Union Pacific Railroad Company, in presence of — H. T. LEAVITT. T. M. ORR.

6116 Mr. Lovett. It is further stipulated that the Eastern Division First Mortgage, dated August 1, 1865, to Henry M. Alexander and John Edgar Thompson, as Trustees, and the mortgage dated July 1, 1866, to John Edgar Thompson and Adolphus Meier, as Trustees, described in the decree of foreclosure in favor of the United States above set forth, Defendants' Exhibit 21, were foreclosed by decrees of the Circuit Court of the United States for the District of Kansas, and by ancillary proceedings and decrees of the Circuit Court of the United States for the Western District of Missouri and the District of Colorado, and the properties covered in and by the said mortgages were pursuant to such decrees sold on the 17th day of February, 1898, to Winslow S. Pierce and Alvin W. Krech; that the said sales so made were duly reported by the Special Master making the same, to the Court, and were confirmed; that the said Pierce and Krech duly assigned their bids for the said property to the Union Pacific Railroad Company, and the said property was duly conveyed by the Special Master making said sale and others to the defendant the Union Pacific Railroad Company.

It is further stipulated that on the 16th day of July, 1894, Russell Sage and George J. Gould, as trustees of the Consolidated First Mortgage of the Kansas Pacific Railway, filed their bill of complaint (in the form customary in such cases in the Circuit Courts of the United States) in the Circuit Court of the United States for the District of Kansas to foreclose the said mortgage.

I now offer in evidence Defendants' Exhibit 27, being copy of decree of foreclosure rendered on the 30th day of July, 1897, by the Circuit Court of the United States for the District of Kansas in the foreclosure suit just mentioned.

6117 It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 27 is as follows:

DEFENDANTS' EXHIBIT 27.

At a Circuit Court of the United States held in and for the District of Kansas, in the City of Leavenworth, on the 30th day of July, 1897.

Present—Hon. Walter H. Sanborn, Circuit Judge.

Russell Sage and George J. Gould, Trustees, Complainants, *vs.* The Union Pacific Railway Company, The United States of America, The Mercantile Trust Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Defendants.	Foreclosure Decree. No. 7123. Consolidated First Mortgage.

DECREE.

This cause came on to be heard at this Term upon the pleadings and proofs therein and upon all of the papers on file, together with the report of William D. Cornish, Special Master, to whom the same was referred by an order dated the 5th day of April, A. D. 1897,
which said report was filed in this cause on the 30th day of
6118 July, A. D. 1897, and upon the exceptions to said report filed
by the complainants herein, and upon all proceedings had in this cause, and was argued by counsel and upon consideration it was, on motion of Winslow S. Pierce and Rossington, Smith & Dallas, solicitors for complainants Russell Sage and George J. Gould, Trustees; the said Union Pacific Railway Company appearing by A. L. Williams, its solicitor; the United States of America appearing by its Attorney-General and by George Hoadly, Special Assistant to the Attorney-General in the matter herein, and by John C. Cowin, Special Counsel for the United States; and the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane appearing by W. R. Kelly, their General Solicitor; and The Mercantile Trust Company appearing by Alexander & Green and Gleed, Ware & Gleed, its solicitors.

Ordered, adjudged and decreed, and the Court doth find, as follows:

I. *Exceptions overruled; Report confirmed.*—That the exceptions filed by the complainants to the report of William D. Cornish, to whom this cause was referred by order therein dated on the 5th day of April, 1897, which said report was filed in this cause on the 30th day of July, 1897, be and the same are hereby overruled and said report is hereby, in all respects approved and confirmed except as herein otherwise expressly determined.

II. *General finding.*—That all of the material allegations of the bill of complaint herein are true.

III. *Formation of K. P. Ry. Co.*—That the Kansas Pacific Rail-
way Company was in the year 1855 duly created under the
6119 name of the Leavenworth, Pawnee & Western Railroad Com-
pany, by an act of the Governor and Legislative Assembly of the Territory of Kansas, and was afterwards aided and endowed with grants and franchises by and through congressional legislation. That the name of said Company was in the year 1863 duly, and pursuant to lawful authority, changed from the "Leavenworth, Pawnee & Western Railroad Company" to the "Union Pacific Railway Company, Eastern Division." That subsequently and in the year 1869, under and by virtue of an Act of Congress of the United States, approved March 3 of that year, the name of the said Company was changed from the "Union Pacific Railway Company, Eastern Division," to that of the "Kansas Pacific Railway Company."

IV. *Property acquired.*—That prior to the first day of May, 1879, the said Kansas Pacific Railway Company, under its various names and in pursuance of its said territorial charter and of said con-

gressional legislation, had constructed and built, and then and theretofore owned and operated a railroad and telegraph line from a point of connection with the Missouri Pacific Railway in Kansas City, Missouri, thence from the Missouri River at the mouth of the Kansas River on the south side thereof, with a spur from Wyandotte, in the State of Kansas to Denver, in the State of Colorado, with a branch from a point on the main line near Lawrence, in said State of Kansas, to Leavenworth, in said State of Kansas, and spurs to Salina and Enterprise, in said State of Kansas; and the said Kansas Pacific Railway Company then owned and was entitled to lands granted to it by the United States in pursuance of certain acts of Congress of the United States hereinafter referred to for the purpose of
6120 aiding in the construction of said railroad and for other purposes, and was the owner of the certain other tracts, lots and parcels of land and other property described and embraced in the Consolidated First Mortgage of the Kansas Pacific Railway Company, hereinafter mentioned.

V. *Formation of Union Pacific Ry. Co.*—That the defendant The Union Pacific Railway Company is a corporation created by and existing under and by virtue of the Acts of the Congress of the United States of July 1st, 1862, and of July 2d, 1864, and the other acts of the Congress of the United States amendatory thereof and supplemental thereto; that said The Union Pacific Railway Company was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several acts of the Congress of the United States, by the consolidation of The Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, and said The Union Pacific Railway Company so created thereupon became the successor of each and all of the said constituent companies, and thereby became vested with all the rights, titles, interests, properties and franchises of each and all of the said constituent companies; and said The Union Pacific Railway Company is the owner of the said railroad, property and franchises embraced in the Consolidated First Mortgage of the Kansas Pacific Railway Company, dated the first day of May, 1879, under which the complainants Russell Sage and George J. Gould are Trustees, and which is hereinafter more fully referred to; and said The Union Pacific Railway Company in addition thereto is the owner of the further lines of railway and property, owned and operated prior to said consolidation
6121 by said The Union Pacific Railroad Company, extending from a point fixed by the President of the United States by Executive orders dated November 17, 1863, and March 7, 1864, as the Eastern terminus of said railroad on the Iowa bank of the Missouri River, across said river and through the States of Nebraska, Colorado and Wyoming into the State of Utah to a connection with the railroad of the Central Pacific Railroad Company at a point about five miles west of the City of Ogden, in the State of Utah, including the bridge over the Missouri River between Council Bluffs, in the State

of Iowa, and Omaha, in the State of Nebraska; and said The Union Pacific Railway Company is the owner of the further line of railroad and property, owned and operated prior to said consolidation by the said Denver Pacific Railway and Telegraph Company, extending from the City of Cheyenne, in the State of Wyoming, to the City of Denver, in the State of Colorado.

VI. *Issue of land grant and funding mortgage bonds.*—That prior to the 1st day of May, 1879, the Kansas Pacific Railway Company had issued and there were then outstanding its bonds amounting in the aggregate to one million four hundred sixty thousand dollars ($1,460,000.00) and known as its First Land Grant Bonds, which were secured by a mortgage known as its First Land Grant Mortgage, which covered and embraced all the lands granted by the United States in aid of the construction of said railroad from the Missouri River to the three hundred eightieth mile-post from the east line of Kansas, and said Company had also issued other bonds which were then outstanding, known as its Second Land Grant Bonds, and secured the same by a mortgage known as its Second Land Grant Mortgage, which covered and embraced the same lands and premises as those conveyed in its First Land Grant Mortgage. Said
6122 First Land Grant Mortgage was executed on the first day of July, 1870, and said Second Land Grant Mortgage was executed on the 23d day of August, 1871, and the bonds secured by the said two Land Grant Mortgages were executed, sold and delivered prior to the completion of the railroad of the Kansas Pacific Railway Company to raise the moneys to aid in the construction and completion of the said railroad.

That the said Company had also issued and there were then outstanding bonds aggregating to the amount of one million five hundred thousand dollars ($1,500,000.00) known as its Funding Bonds, which were secured by a mortgage executed by said Company upon its railroad and telegraph line and the Leavenworth Branch, and certain other property of said Company, including certain stocks and bonds owned by said Company. That all of said First and Second Land Grant Bonds and said Funding Bonds were subsequently exchanged for the Consolidated First Mortgage Bonds, hereinafter mentioned, and the said First and Second Land Grant Mortgages and said Funding Mortgage were cancelled and satisfied, and by reason of the premises, the Trustees of said Consolidated First Mortgage became subrogated to all the rights, securities, equities and liens of the holders of the bonds secured by the said First and Second Land Grant and Funding Mortgages.

VII. *Issue of consolidated first mortgage bonds.*—That said Kansas Pacific Railway Company, pursuant to and in accordance with the powers conferred upon it by law and pursuant to due corporate action, and for the purpose of consolidating the entire funded debt of said Company, then outstanding and secured by the eight mortgages recited in said Kansas Pacific Consolidated First Mortgage and known and therein designated as the Eastern Division, the

6123 Middle Division, the Denver Extension, Leavenworth Branch, Income, Funding, First, and Second Land Grant Mortgages, and to convert and to fund in the same security the obligations and liabilities which had been or thereafter might be incurred by said Company as the guarantor of the bonds or the purchaser of the stock or bonds of other companies, or lessee of the roads thereof, and for the purpose of providing means for the construction of an extension of said road in a southwesterly direction to the west line of Colorado, or of such other extensions or branches of such railroad of said Company as might be then or thereafter authorized by law, with the increase of equipment necessary to prepare for and operate said extensions and branches, did duly make, execute and issue, under its corporate seal, and did deliver to various persons, firms and corporations for value, and for the considerations and purposes and in the manner provided by its Consolidated First Mortgage, hereinafter mentioned, its Consolidated First Mortgage Bonds to the number of sixteen thousand four hundred sixty-three, in the aggregate amount of sixteen million four hundred sixty-three thousand dollars ($16,463,000.00), each of which said bonds was dated on the 1st day of May, 1879, and in each of which the said Kansas Pacific Railway Company promised to pay to the bearer at the Bank of Commerce in the City of New York, on the 1st day of May, 1919, one thousand dollars in United States gold coin of the then present standard, with interest thereon in like gold coin at the rate of six per cent. per annum, payable at the same place semi-annually, on the first days of May and November in each year, free

6124 of all taxation by the United States, upon presentation and surrender of the interest warrants therefor annexed to said bonds, all of which bonds were as issued and delivered duly certified by the Trustees named in said mortgage as therein provided.

That of said bonds so issued by the said Kansas Pacific Railway Company, there have been surrendered and cancelled as and in the manner contemplated by the provisions of said mortgage, bonds amounting in the aggregate to four million, seven hundred thirty-nine thousand dollars ($4,739,000.00), and that the amount of such bonds so issued which now remain outstanding and unpaid is eleven million, seven hundred twenty-four thousand dollars ($11,724,000.00).

That pursuant to and in accordance with the powers conferred upon it by law, and pursuant to due corporate action, and for the purpose of securing the payment of the bonds aforesaid, issued and to be issued, with interest due and growing due thereon, and for other lawful considerations, the said Kansas Pacific Railway Company did duly make and execute, under its corporate seal, and did deliver to Jay Gould and Russell Sage, as Trustees, a mortgage, or deed of trust, dated the 1st day of May, 1879, wherein and whereby the Kansas Pacific Railway Company did grant, bargain, sell, convey, transfer and assign unto the said Jay Gould and Russell Sage, Trustees, and their heirs, executors, administrators and assigns, and lawful suc-

cessors, as such Trustees, according to the respective nature and quality thereof, all and singular the lands, land grants, contracts, purchase money, bills receivable, stocks, bonds, debts or sums of money then due and payable by the United States, railways and telegraph lines, and all the property, real and personal, and the
6125 income, tolls, revenues, franchises, estate and interest of said Company which were in said mortgage or deed of trust set forth and described as follows:

"Firstly. All and singular the lands granted to said Company by the United States, as hereinbefore recited, and not heretofore sold and conveyed, being in amount about five millions of acres together with all contracts for the sale thereof, and all purchase money or bills receivable belonging or due to said company in respect thereof, all of which lands are intended to be, from time to time, more particularly described and identified by deeds of further assurance thereof to said Trustees, as the same may be selected, surveyed and patented by the United States to said company.

Secondly. All and singular the lands comprised and described in the first schedule hereunder written.

Thirdly. All and singular the stocks and bonds comprised in and described by the second schedule hereunder written.

Fourthly. All the debt or sums of money now due and payable by the United States to said company for transportation or otherwise.

Together with the right, title, estate or interest, legal or equitable, of every description, of said company in said lands, land contracts, bills receivable, stocks, bonds and debt or moneys payable by the United States; and with full and irrevocable authority to said Trustees in the name of said company, or otherwise, and as its lawfully and irrevocably appointed attorneys, to sue for and collect said purchase moneys, bills receivable, bonds and sums due from the United States, and all interest and dividends on such stocks,
6126 bonds and sums of money, and to give proper receipts and discharges therefor, with as full force and effect, in every respect, as if said receipts and discharges were made or given by said company, but reserving, nevertheless, to said company, with the consent of said Trustees, full power to surrender, modify or in any manner dispose of said sum due by the United States to said company in payment or reduction or in arrangement or compromise, in any manner, of the claim of the United States against said company hereinbefore recited.

Fifthly. All and singular the railway and telegraph line of said company, from its present terminus at Kansas City, in Missouri, to Denver, in Colorado, and the branch line from Lawrence to Leavenworth, and the spurs to Wyandotte, Salina and Enterprise, together with the right of way, depot, depot grounds, spurs, side tracks, machine shops, machinery, bridges, water tanks, tools, utensils, materials and supplies, and all the lands, buildings and other things incident or appurtenant to said railway, at and between the terminal points aforesaid, or which may be at any time hereafter purchased or

acquired for the operation or maintenance thereof, and all the locomotives, cars, carriages and rolling stock of every description now belonging to said company and used for the operation of said railway between the points aforesaid, or which may be at any time hereafter purchased or acquired by it for such purpose; and the income of said railway, and all the tolls and revenues thereof between the points aforesaid, and all the franchises of said company to maintain and operate such railway between the points aforesaid and to be a corporation, and all the estate and interest of said company in said premises,

but subject, nevertheless, to all prior liens and mortgages
6127 affecting the same hereinbefore recited."

VIII. *Miscellaneous lands covered by consolidated first mortgage.*—The property embraced in Schedule One, referred to in said mortgage, is as follows:

MISCELLANEOUS LANDS.

All that part and parcel of land situate in section six in township forty-nine, north in range thirty-three, west of the fifth principal meridian, in the County of Jackson and State of Missouri, to wit: Commencing at a metal post with the initials K. P. R. W. set in the centre line of the track of the Kansas Pacific Railway at the point where it crosses the State line of Kansas and Missouri; thence north sixty-one degrees and fifty minutes east along said centre line three hundred and thirty-six and one-half feet to a stake in the old bed of Turkey creek; thence north one hundred and ninety-six feet to a railroad spike driven in the east end of the platform of the "State Line" Freight Depot, in the produced centre line of Kansas Pacific Railway; thence north sixty-one degrees and fifty minutes east along said centre line seventy-seven feet to a metal post in said centre line marked K. P. R. W.; thence south eighty-seven degrees and ten minutes east nine hundred and five feet to a metal post marked K. P. R. W.; thence south sixty-eight degrees and forty-five minutes west fourteen hundred and forty-one feet to a metal post marked K. P. R. W.; set in State Line of Kansas and Missouri; thence north along said State line three hundred and forty-four feet and three inches to the beginning, containing seven and eighteen one hundredths (7 18/100) acres, be the same more or less. Also all that part or par-
cel of land situate in section six, township forty-nine, north of
6128 range thirty-three, west of the fifth principal meridian in the County of Jackson and State of Missouri, to wit: Commencing at a metal post with the initials K. P. R. W., set between "State Line House" and State Line "Freight Depot," in the produced centre line of the Kansas Pacific Railway; thence south eighty-seven degrees and ten minutes east nine hundred and five feet to a metal post with the initials K. P. R. W.; thence north one degree and twenty minutes east five hundred and forty-two feet to a metal post with the initials K. P. R. W. in the centre line of the track of the Missouri Pacific Railroad (being the same as the produced centre line of the track of the Kansas Pacific Railway); thence along said centre line south

sixty-one degrees and fifty minutes west ten hundred and forty-nine and one-half feet to the place of beginning, containing five and sixty-three one-hundredths (5 63/100) acres, more or less. Also all that part and parcel of land situate in section six, township forty-nine, north in range thirty-three, west of the fifth principal meridian in the County of Jackson and State of Missouri, to wit: Commencing at a metal post marked K. P. R. W. set in centre of the track of the Kansas Pacific Railway, thirty-seven and three-quarter feet from the point where said centre line crosses the State line of Missouri and Kansas; thence south eighty-seven degrees and ten minutes east three hundred and thirty-six and one-half feet to a stake in the old bed of Turkey creek; thence north one hundred and ninety-six feet to a railroad spike driven into the east end of the platform of State Line Freight Depot, in a produced centre line of the track of the Kansas Pacific Railway; thence south sixty-one degrees and fifty minutes west along said centre line three hundred and eighty
6129 and one quarter feet to the place of beginning, containing seventy-five one hundredths (0 75/100) of an acre, more or less. Also all that tract or parcel of land situate in the County of Wyandotte, State of Kansas, and described as follows, to wit: Commencing at a metal post marked K. P. R. W., where the produced centre line of the track of the Kansas Pacific Railway crosses the State line of Kansas and Missouri; thence along said produced centre line of the track of the Kansas Pacific Railway, south sixty-one degrees and fifty minutes west ten hundred and fifty-four feet to a metal post marked K. P. R. W.; thence south twenty degrees and thirty minutes east two hundred and three feet to a metal post marked K. P. R. W.; thence north sixty-one degrees and fifty minutes east nine hundred and seventy-five feet to a metal post marked K. P. R. W.; thence along the State line of Kansas and Missouri two hundred and twenty-seven feet to the place of beginning, containing four and sixty-five one-hundredths (4 65/100) acres, more or less. Also all that tract or parcel of land situate in the County of Wyandotte and State of Kansas, and described as follows: Beginning at the northwest corner of the southwest quarter of section fifteen, township eleven, south of range twenty-five east of the sixth principal meridian; thence south to the southwest corner of said section fifteen; thence east eighty rods; thence north fifty-two rods; thence east twenty-eight rods; thence north one hundred and eight rods; thence west one hundred and eight rods to the place of beginning, containing ninety-eight and nine-tenths (98 9/10) acres. Also all that tract or parcel of land situate in the County of Wyandotte and State of Kansas, and described as follows, to wit: Beginning at the northeast corner of the southwest quarter of section fifteen, township
6130 eleven, south in range twenty-five east of the sixth principal meridian; thence east eight rods; thence south eighty rods; thence west eight rods; thence south twenty-eight rods; thence west fifty-seven rods; thence north one hundred and eight rods; thence east fifty-seven rods to the place of beginning, containing forty-two and

thirty-one one-hundredths (42 31/100 acres. Also, all that tract or parcel of land situate in Wyandotte County, State of Kansas, and described as follows, to wit: The southeast quarter of the northwest quarter of section fifteen, township eleven, south in range twenty-five east of the sixth principal meridian, known as the Susan Hicks tract, excepting nevertheless ten (10) acres on the west side of said tract especially described as follows, to wit: Beginning at the northwest corner of said tract and running thence south along the west line of said tract to the southwest corner thereof; thence east along the south line of said tract to a point far enough to include ten (10) acres; thence north to the north line of said tract; thence west along said north line to the place of beginning; the remainder of said tract containing thirty (30) acres, more or less. Also all that tract or parcel of land situate in the County of Wyandotte, and State of Kansas, and described as follows, to wit: Beginning eight rods east of the northwest corner of the southeast quarter of section fifteen, township eleven, south in range twenty-five east of the sixth principal meridian; thence south forty rods; thence east to the west bank of the Kansas River; thence down said river to a point due east of the beginning; thence west to the place of beginning, containing forty-
one and twenty-five one hundredths (41 25/100) acres, more or
6131 less. Also, all that parcel or tract of land situate in the County of Wyandotte, State of Kansas, and described as follows: Beginning at the quarter section corner on the line dividing sections numbered two and three, in township number eleven, south in range twenty-five east of the sixth principal meridian; thence east five chains and nineteen links to a stake on the right bank of the Missouri river; thence up said river north ten degrees and forty-nine minutes east four chains and fifty-nine links; thence north fourteen degrees and twelve minutes east fifteen chains and thirty-one links to a stake on the right bank of said river; thence west fifteen chains and fifty-one links to a stake; thence south nineteen chains and thirty-two links; thence east five chains and seventy-two links to the place of beginning, containing twenty-five and one-quarter (25 25/100) acres, more or less. Also all that tract or parcel of land situate in the County of Douglas, State of Kansas, and described as follows, to wit: The northeast quarter and the north half of the southeast quarter of section twenty-nine, township twelve, south in range twenty east of the sixth principal meridian, containing two hundred and forty (240) acres more or less. Also, all that tract or parcel of land situate in the County of Shawnee, State of Kansas, and described as follows, to wit: Beginning at a stake fifty feet north of the Kansas Pacific Railway, on the range line between ranges thirteen and fourteen east; thence south seventy-one degrees east parallel with the said railway three hundred and thirty-seven feet to a stake; thence south seventy-six degrees and thirty minutes east one hundred and fifty feet to a stake sixty-four feet north of said railroad; thence south seventy-four
degrees east nine hundred and eighty feet to a stake sixty-nine
6132 feet north of said railroad; thence south sixty-nine degrees

east to a stake fifty feet north of said railroad; thence south to the centre of said railway track, north seventy-one degrees west to the said range line; thence north fifty feet to the place of beginning, containing one hundred and twenty-eight thousand one hundred and seventy-five (128,175) square feet, or two and nine hundred and forty-two thousandths (2 942/1000) acres, more or less. Also all that tract or parcel of land situate in the County of Pottawatomie, State of Kansas, and described as follows, to wit: A strip of land in the northeast quarter of section nine, township ten, south in range ten, east of the sixth principal meridian, lying south of and adjoining the land heretofore conveyed by Antoine Ulrich and wife to the Union Pacific Railway Company, Eastern Division, for right of way, and being two hundred and fifty feet in width, and extending from the east line of Ash street, in the Town of Wamego (produced), to the east line of section nine aforesaid, containing fifty (50) acres, more or less. Also all that tract or parcel of land situate in the County of Davis, State of Kansas, described as follows, to wit: Fractional section one, in township twelve south, range five east, situate within the Government reservation at Fort Riley, containing five hundred and thirty-two and forty-five hundredths (532 45/100) acres, excepting therefrom the following described lots and blocks in the railroad addition to Junction City, which addition is located on said fractional section number one, to wit: Lot four in block three; lots one and six in block four; lot one in block five; lot one in block six; lots one, two and twelve in block eight; lots one, four, five and six in block ten; lots seven and eight in block eleven; lot fifteen in
6133 block twenty-five; lots four, five and six in block twenty-seven; lots four and five in block forty-three; lot fifteen in block forty-six; lots one to eight, both inclusive, in block forty-nine. Also lots twenty-one to twenty-eight, both inclusive, in block forty-nine; lots one to twenty-four, both inclusive, in block fifty-six; lots ten to eighteen both inclusive, in block fifty-seven; lot seventeen in block fifty-eight; all of block fifty-nine; lots one, two, seven, eight, nine, sixteen and seventeen in block sixty; all of block sixty-one, except lots seven, eight and nine; all of block sixty-two; lot one in block sixty-nine; lots one, two, five, six, fifteen, sixteen, seventeen, eighteen, nineteen, twenty and twenty-one in block seventy; lots one, three and four in block seventy-one; lots one, two, three, four, five, fifteen, sixteen, seventeen and eighteen in block seventy-eight; all of blocks "A" and "B," and also a tract of land at the Kansas Pacific Railway station containing about forty (40) acres, more or less, and bounded as follows: By Thirteenth street on the north, Eighth street and the south line of the Fort Riley military reservation (being the line between the railroad addition and the old town of Junction City) on the south, Perry street on the east, and Price street on the west. Also the following described lots in the Town of Chapman, in Dickinson County, State of Kansas, to wit: The east half of block three; lots three, thirteen, sixteen and nineteen in block six; lots one, four, seven, ten, twelve, fifteen and eighteen in block seven; south half of block eight;

lots one, four, seven, ten, eleven, fourteen, seventeen, and twenty in block ten; lots three, six, nine, fifteen and eighteen in block eleven; all of block twelve; lots one, two, seven, eight, thirteen, four-
6134 teen, nineteen and twenty in block fourteen; lots one, two, three, fifteen and sixteen in block fifteen; north half of block sixteen; all of block seventeen; lots one, two, seven, eight, twelve, thirteen, eighteen and nineteen in block eighteen; lots three, four, nine, ten, sixteen and seventeen in block nineteen. Also the following described tracts or parcels of land situate in the County of Dickinson, and State of Kansas, as follows: The southeast quarter of the southeast quarter of section twenty-eight, and the southwest quarter of section twenty-seven, in township twelve, south in range four, east of the sixth principal meridian, containing eighty (80) acres, more or less. Also all that tract or parcel of land situate in the County of Davis, State of Kansas, and described as follows, to wit: All that portion of the east half of the northeast quarter of section twenty-two, in township twelve, south in range five, east of the sixth principal meridian, lying, being and situate north of the north line of a parcel of land heretofore conveyed by Gurden E. Beates to the Union Pacific Railway Company, Eastern Division, for the railroad tracks, and other purposes, containing forty-one and seventy-hundredths (41 70/100) acres, more or less. Also all the following described lots in the town of Salina, County of Saline and State of Kansas, to wit: Lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, thirty-one, thirty-two, thirty-three and thirty-four in block seven; lots one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve in block eleven; lots one, two, three, four, five, twenty-two, twenty-three, twenty-four and twenty-five in block twelve; lots one, two, three, four, thirteen, four-
6135 teen and fifteen in block thirteen; lots seven, eight, nine, ten, eleven, twelve, thirteen and fourteen in block fourteen. Also all that tract or parcel of land situate in the County of Ellis, State of Kansas, and described as follows, to wit: The southeast quarter of section ten, in township thirteen, south in range twenty, west of the sixth principal meridian, containing one hundred and sixty (160) acres, more or less. Also all that tract or parcel of land situate in the County of Ellis, State of Kansas, and described as follows, to wit: The northeast quarter of section eight, in township thirteen, south in range twenty west of the sixth principal meridian, containing one hundred and sixty (160) acres, more or less, excepting therefrom the following lots in the town of Ellis, to wit: Lots eight, nine and twenty in block five; lots fifteen, sixteen and thirty, in block six, and lot fifty-four in block ten; and excepting also all that portion of the town of Ellis, lying between Edwards and Benton streets on the north, and Church street on the south, reserved for railway purposes. Also all that tract or parcel of land situate in the County of Arapahoe, State of Colorado, and described as follows, to wit: Beginning at the northwest corner of the grounds of the Colorado Agricultural Society, commonly known and called the "Fair Grounds," and running

thence due west the distance of eight hundred and thirty feet; thence due north one quarter of a mile to the east and west centre line of section twenty-three, township three, south in range 68, west; thence due east to the centre of said section; thence due south one-quarter of a mile to the place of beginning, containing twenty-five (25) acres, more or less. Also all that tract or parcel of land situate in Arapahoe County, State of Colorado, described as follows, to wit: The
6136 north half of the southeast quarter of section twenty-three, in township three, south in range sixty-eight, west of the sixth principal meridian, excepting therefrom the right of way heretofore granted to the Denver Pacific Railway Company. Also all that tract or parcel of land situate in the County of Elbert, State of Colorado, described as follows, to wit: The east half of the northwest quarter, and the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter of section twenty-eight, in township seven, south in range sixty-one, west of the sixth principal meridian, containing one hundred and sixty (160) acres, more or less. Also, all the right, title, interest, legal or equitable, whatsoever, which said company now has or is entitled to, or which it may at any time hereafter acquire or become entitled to, of, in or to all those lands or sections of land, and each and every part of them, granted or to be granted under or by virtue of the Acts of Congress of the United States of America, in aid of, or by reason or in respect of the construction of the railway and parts thereof, of the Kansas Pacific Railway Company from the three hundred and eightieth mile post to the three hundred and ninety-fourth mile post on the line of said railway, being twenty sections of land for each and every mile of said railway, and including all the contracts given upon sale of the lands aforesaid, and all moneys to become due thereon.

IX. *Securities covered by consolidated first mortgage.*—The stocks and bonds embraced in Schedule Two, referred to, are as follows:

First. 29,986 shares of $100 each in the capital stock of the Denver Pacific Railway and Telegraph Company.

6137 Second. Eight hundred and twenty bonds of one thousand dollars each, made by the Junction City and Fort Kearney Railway Company, dated April 1st, 1873, payable April 1st, 1903, in gold coin of the United States, with interest at the rate of seven per cent. per annum, in like gold coin.

Third. Seven thousand two hundred shares, of one hundred dollars each, of the capital stock of the Junction City and Fort Kearney Railway Company.

Fourth. Ten thousand six hundred and eighty-two shares, of one hundred dollars each, of the capital stock of the Arkansas Valley Railway Company.

Fifth. Nine hundred and thirty-eight shares, of one hundred dollars each, of the capital stock of the National Land Company.

Sixth. Three hundred and ninety-five bonds, of one thousand dollars each, of the Kansas Pacific Railway Company, secured by the

"Second Land Grant Mortgage," dated August 23d, 1871, and in the above written indenture recited.

X. *Trustees; recording of mortgage.*—That the said Jay Gould and Russell Sage duly accepted said mortgage or trust deed of May 1st, 1879, and the trust thereunder and continued to be and acted as the Trustees thereof until the death of the said Jay Gould; that on the 2d day of December, 1892, the said Jay Gould departed this life, and thereafter and on the 21st day of February, 1893, George J. Gould, one of the complainants herein, was duly and in conformity with the provisions of said mortgage in that behalf appointed trustee under said mortgage in the place and stead of the said Jay Gould, deceased;

that the said George J. Gould accepted such appointment as
6138 such Trustee, and has been continuously since the 21st day of February, 1893, and is now one of the Trustees of said mortgage; and that the said Russell Sage and George J. Gould as such Trustees have of right and as thereto duly authorized instituted and maintained the cause herein embraced, in which they are complainants, for the relief sought and herein decreed.

That the said Consolidated First Mortgage aforesaid was duly recorded in all places where the same was required by law to be recorded, and said mortgage and the bonds issued thereunder became and were a valid lien upon all the railroads, lands, land grants, property and franchises mentioned and described in said mortgage or deed of trust.

XI. *Lien and priorities defined.*—That the said Consolidated First Mortgage of May 1, 1879, is a valid and subsisting first and paramount lien upon all the miscellaneous lands mentioned and described in Schedule One, hereinbefore referred to, attached to said mortgage, from which the lien of said mortgage has not been released by said Trustees, and is also a first and paramount lien on all the lands granted by Congress whether patented or as yet unpatented, to aid in the construction and equipment of said railroad lying east of the 394th mile post west of the State line of Kansas and Missouri, which have not been duly conveyed by the said Kansas Pacific Railway Company, or its successor The Union Pacific Railway Company, and released by said Trustees under the powers reserved in said Consolidated First Mortgage; and is also a first and paramount lien upon all the rights to which the said Kansas Pacific Railway Company or its successor The Union Pacific Railway Company was or is entitled to under said grants of Congress to receive

from the United States lands or patents for any lands lying east
6139 of said 394th mile post, and which lands have not been certified or patented to said Railroad Companies or either of them under said Acts of Congress; and is also a first and paramount lien upon all the land contracts and proceeds arising from the same now outstanding and existing for or with reference to the disposal of any of said lands, either by said Kansas Pacific Railway Company or its successor The Union Pacific Railway Company or by the said Trustees; a more full description of which lands is shown by the schedule

giving a list of said lands, with the Government descriptions thereof, which list is embraced in the said Master's Report herein and is there designated "Schedule C." And said mortgage is also a first and paramount lien upon all the securities, stocks and bonds mentioned in Schedule 2, referred to in said mortgage, which have not been withdrawn from said trust and released from the lien and operation of said Consolidated First Mortgage as hereinafter found. And also upon the lands, properties, funds, stocks and securities held in trust by said Trustees of said Consolidated First Mortgage as hereinafter and more particularly referred to. That said mortgage is a second lien, junior, inferior and subordinate to that of the lien created by the said Denver Extension Mortgage upon all the lands granted by Congress whether patented at the date of this decree or not, to aid in the construction and equipment of said railroad, lying west of said 394th mile post which have not been duly conveyed by the said Kansas Pacific Railway Company prior to the execution of said Consolidated First Mortgage, or by the said Kansas Pacific Railway Company or its successor The Union Pacific Railway Company, subsequent to the execution of said Consolidated First
6140 Mortgage and released from the liens of said Denver Extension Mortgage and of said Consolidated First Mortgage under the provisions thereof. And said Consolidated First Mortgage is also a second lien, junior, inferior and subordinate to the lien created by the Denver Extension Mortgage upon all the rights to which the said Kansas Pacific Railway Company, or its successor, The Union Pacific Railway Company, was or is entitled under said acts of Congress to receive from the United States lands or patents for any lands lying west of said 394th mile post, and which lands have not been certified or patented to said Railroad Companies, or either of them, under said acts of Congress. And said Consolidated First Mortgage is also a second lien, junior, inferior and subordinate to that of the lien created by the Denver Extension Mortgage upon all the land contracts and proceeds arising from the same now outstanding and existing, for or with reference to the disposal of any of said lands lying west of said point, either by the said Kansas Pacific Railway Company or its successor, The Union Pacific Railway Company, or by the Trustees under said Denver Extension Mortgage, or by the Trustees under said Consolidated First Mortgage; a more full description of all of which lands lying west of said 394th mile post is shown by the Schedule giving a list of said lands with the Government description thereof, which is embraced in the said Master's Report herein and there designated "Schedule D."

XII. *Lien and priorities defined.*—Said Consolidated First Mortgage of May 1, 1879, is a valid and subsisting lien upon all and singular the railway and telegraph line of the Kansas Pacific Railway Company, or its successor, The Union Pacific Railway Company, from its present terminus at Kansas City, in the State of
6141 Missouri, to Denver, in the State of Colorado, and the branch line thereof from Lawrence to Leavenworth, in the State of

Kansas, and the spurs to Wyandotte, Salina and Enterprise, in said State of Kansas, together with the right of way, depots, depot grounds, spurs, side tracks, machine shops, machinery, bridges, water tanks, tools, utensils, materials and supplies, whether held at the date of the execution of said Consolidated First Mortgage or thereafter acquired by either the Kansas Pacific Railway Company or its successor, The Union Pacific Railway Company, or the Receivers of said Union Pacific Railway Company, for the use of said lines of railroad or in connection therewith, or the business thereof, and all the lands, terminals, terminal properties and facilities, also buildings or other things incident or appertaining to said railway and said terminals and terminal properties situate and being in the city of Kansas City, in the State of Missouri, and in the City of Denver, in the State of Colorado, or at and between said terminal points aforesaid or elsewhere, which the said Kansas Pacific Railway Company owned or was entitled to at the date of the execution of said Consolidated First Mortgage, or which it or its successor The Union Pacific Railway Company or the said Receivers have since purchased or acquired for the operation and maintenance of said railway or for use in connection with or for the purposes of said railway, or any of them, or of the business of said Union Pacific Railway Company in connection therewith; and also upon all and singular the franchises originally or subsequently owned, possessed or acquired by the Kansas Pacific Railway Company or by its successor The Union Pacific Railway Company, for the purposes of maintaining and operating said
6142 railway between said points and to be a corporation; and upon all the title and interest of said Kansas Pacific Railway Company or its successor The Union Pacific Railway Company and its Receivers in said premises; and upon all the locomotives, cars, carriages and rolling stock of every description, including Pullman sleeping cars, acquired by the Kansas Pacific Railway, The Union Pacific Railway and its Receivers, for use upon or in connection with the operation of said mortgaged premises or necessary to running and operating the same, being an undivided twenty-five per centum of all the locomotives, cars, carriages, rolling stock and equipment now owned or used by The Union Pacific Railway Company or its Receivers upon the entire property of The Union Pacific Railway Company, and including to the extent of twenty-five per centum thereof the interest of The Union Pacific Railway Company and its Receivers in all of the locomotives, cars, carriages and equipment embraced and included in the three equipment trust indentures of The Union Pacific Railway Company to the American Loan and Trust Company of Boston, Trustee, all dated October 1, 1887, and securing respectively bonds designated Series A Bonds to the extent of seventy-two thousand dollars ($72,000) thereof now outstanding; Series B Bonds to the extent of two hundred and ten thousand dollars ($210,000) thereof now outstanding; and Series C Bonds to the extent of two hundred and twenty-five thousand dollars ($225,000) thereof now outstanding.

XIII. *Lien and priorities defined.*—The lien of said Consolidated First Mortgage is, as to the railroad, telegraph and appurtenant property extending from the eastern terminus of the Kansas Pacific Railway Company at a point in the State of Missouri about .51 of a mile east of the Missouri-Kansas State Line, west-
6143 wardly to a point 140 miles west of said State Line, subject to the following liens:

1. The lien of the mortgage executed by the Union Pacific Railway Company, Eastern Division, to John Edgar Thomson and Henry M. Alexander as trustees, dated August 1st, 1865, and under which Henry M. Alexander and John F. Dillon are the present trustees, known as the Eastern Division Mortgage, and which secures First Mortgage bonds now outstanding to the amount of $2,240,000.

2. The mortgage or lien constituted by the acts of Congress of July 1st, 1862, and July 2nd, 1864, in favor of the United States of America to secure the repayment to the United States of the amount of the subsidy bonds issued to the Union Pacific Railway Company, Eastern Division, together with all interest thereon which shall have been paid by the United States, which mortgage lien is herein designated as the subsidy lien and secures the subsidy debt of the said railway company on account of principal of said subsidy bonds and balance of interest account thereon, to the total amount on April 1st, 1897, of $12,891,900.19.

3. The lien of the mortgage executed by the Union Pacific Railway Company, Eastern Division, to Carlos S. Greeley and Adolphus S. Meier as trustees, dated the 1st day of July, 1866, known as the Income Mortgage, and which secures bonds now outstanding to the amount of $4,275,350, of which said bonds all, except $243,000, were, by agreement of the holders thereof, subordinated to the lien of the Denver Extension Mortgage next specified.

4. The lien of the mortgage executed by the Kansas Pacific
6144 Railway Company to John Edgar Thomson, John A. Stewart and William Endicott, Jr., dated the 20th day of June, 1869, and the agreement supplemental thereto, dated on the 9th day of April, 1879, which said mortgage, known as the Denver Extension Mortgage, of which John A. Stewart and William Endicott, Jr., are the surviving trustees, secures bonds now outstanding to the amount of $5,887,000.

The lien of the Consolidated First Mortgage is, as to the railroad, telegraph and appurtenant property extending from said point 140 miles west of said Missouri-Kansas State Line westwardly to a point 393.9425 miles west of said State Line, subject to the following liens:

1. The lien of the mortgage executed by The Union Pacific Railway Company, Eastern Division, to John Edgar Thomson and Adolphus Meier, as trustees, dated June 1st, 1866, and under which John F. Dillon and John A. Stewart are the present trustees, known as the Middle Division Mortgage, and which secures first mortgage bonds now outstanding to the amount of $4,063,000.

2. Said subsidy lien.

3. The lien of said Income Mortgage, securing bonds subordinated or unsubordinated as aforesaid.

4. The lien of said Denver Extension Mortgage.

The lien of said Consolidated First Mortgage is, as to the railroad, telegraph and property appurtenant, extending from said point 393.9425 miles west of the Missouri-Kansas State Line westwardly to the City of Denver, Colorado, subject to the lien of the said Denver Extension Mortgage.

The lien of said Consolidated First Mortgage is as to the
6145 railroad, telegraph and appurtenant property, extending from Leavenworth, Kansas, to a junction with the main line at or near Lawrence, Kansas, subject to the lien of the mortgage executed by the Union Pacific Railway Company, Eastern Division, to John Edgar Thomson and Henry M. Alexander, dated January 1st, 1866, and under which Henry M. Alexander and John F. Dillon are the present trustees, known as the Leavenworth Branch Mortgage, and which secures First Mortgage bonds now outstanding to the amount of $600,000.

The lien of said Consolidated First Mortgage is subject to the right and title of the American Loan and Trust Company, trustee of the Equipment Trust Indenture of The Union Pacific Railway Company, dated October 1st, 1887, to the extent and so far as the said indenture affects the portion of the equipment therein embraced, which is herein decreed to pertain to the mortgaged premises covered by said Consolidated First Mortgage and to the extent of the purchase money indebtedness found to be outstanding under said Equipment Trust Indenture, and subject also to the rights in said portion of the equipment embraced in said Equipment Trust Indenture of the several mortgages to the liens of which the said Consolidated First Mortgage is, in this article, found to be junior and subordinate.

XIV. *Securities held by trustees.*—That since the delivery of said Consolidated First Mortgage of May 1, 1879, by said Kansas Pacific Railway Company and the execution of the trust reposed in said Trustees, the said complainants and their predecessors in office as such Trustees have, under and pursuant to the provisions of said mortgage, exchanged certain of said Consolidated First
6146 Mortgage bonds for certain securities, which said securities complainants now hold as a part of the mortgaged property, and which, together with other securities held by said Trustees, are as follows, to wit:

Salina & Southwestern First Mortgage Bonds	$540,000.00
Bonds numbered from 1 to 540; mortgage dated Jan. 25th, 1882; coupons attached due March 1/86 to Jan. 1/1912. Arkansas Valley Bonds	1,125,000.00
Bonds numbered from 1 to 1125; mortgage dated April 1/1873; coupons attached due Oct. 1/74 to April 1/1903. The mortgage securing these bonds was foreclosed, the property sold and a dividend of received and stamped on the bonds.	
Leavenworth Branch First Mortgage Bonds	585,000.00

Bonds numbered as follows: 1/83, 85/192, 200/236, 241/291, 293/299, 301/531, 533/600; mortgage dated Jan. 1/1866; coupons attached due May 1/77 to Nov. 1/95.
Salina, Lincoln & Western First Mortgage Bonds $519,000.00
Bonds numbered from 1 to 519; mortgage dated December 1/1885.
Union Pacific, E. D., Income Bonds, Stamped 3,997,650
Union Pacific, E. D., Income Bonds, Unstamped 243,200
6147 Mortgage dated July 1/1866; $3,871,000 are in denominations of $1,000 each; $271,750 are in denominations of $250, and $98,100 in denominations of $100 each. 4,240,850.00
Solomon R. R. First Mortgage Bonds 275,000.00
Bonds numbered from 1 to 575; mortgage dated May 1/1878; coupons attached dated Nov. 1/90 to May 1/1908.
Lawrence & Emporia First Mortgage Bonds 465,000.00
Bonds numbered from 1 to 465; mortgage dated Jan. 25/1882; coupons attached dated Sep. 1/1882, to Jan. 1/1912.
Denver Pacific Railroad & Telegraph Co. First Mortgage Bonds 971,000.00
Mortgage dated Aug. 10/1869; coupons attached due May 1/78 to May 1/99.
Also 29,000 coupons $25 each, detached from one thousand bonds of the last mentioned series, which bonds were taken up out of proceeds of land sales and together with unmatured coupons thereon were cancelled, being 29 coupons from Nov. 1/78 to Nov. 1/92 from each bond 1,015,000.00
Denver & Boulder Valley Bonds 17,000.00
Coupons attached due May 1/78 and subsequent.
Junction City & Ft. Kearney First Mortgage Bonds 1,141,000.00
Bonds numbered from 1 to 1141; mortgage dated April
6148 1/1873; coupons attached due Oct. 1/83 to April 1/1903.
Golden, Boulder & Caribou First Mortgage Bonds 60,000.00
Bonds numbered from 1 to 60; mortgage dated Nov. 14/1877; coupons attached due Dec. 1/90 to Dec. 1/97.

	Par value.
National Land Co. stock	200,000 00
Junction City & Ft. Kearney stock	720,000 00
Solomon R. R. Co. stock	20,010 00
Arkansas Valley stock	10,682 00
Golden, Boulder & Caribou stock	600 00
Denver, Marshall & Boulder Bonds	202,000 00
Kansas Pacific Bills Receivable under land contracts outstanding April 14, 1897	$1,603,354 00

upon all of which the said Consolidated First Mortgage of May 1, 1879, is a valid and subsisting first and paramount lien.

XV. *Miscellaneous lands.*—That since the delivery of said Consolidated First Mortgage of May 1, 1879, by said Kansas Pacific Railway Company and the execution of the trust reposed in said Trustees, the complainants and their predecessors in office as such Trustees under and pursuant to the provisions of said mortgage have acquired title to certain real estate, which said Trustees now hold as a part of the mortgaged property and which real estate is described as follows:

Part.	Section	Township	Range	Acres Contracted	Acres Unsold
S. W. ¼	13	10 S.	6 E.	.....	160
S. E. ¼	29	10 S.	6 E.	.....	160
S. E. ¼	19	7 S.	7 E.	160	.....
6149 S. E. ¼	17	9 S.	7 E.	160	.....
N. E. ¼	19	7 S.	9 E.	.....	160
S. ½ S. W. ¼	19	7 S.	9 E.	80.36	.....
S. W. ¼	17	8 S.	10 E.	160	.....
Lot 1	25	7 S.	11 E.	.....	24
S. W. ¼ of S. E. ¼	7	14 S.	18 E.	40	.....
N. W. ¼	5	11 S.	1 W.	151.62	.....
S. W. ¼	5	11 S.	1 W.	160	.....
S. W. ¼	9	17 S.	2 W.	160	.....
N. ½ of S. E. ¼	15	17 S.	2 W.	80	.....
S. W. of S. E. ¼	15	17 S.	2 W.	40	.....
S. W. ¼	31	17 S.	2 W.	.....	168.22
N. W. ¼	5	16 S.	4 W.	.....	160.41
N. E. ¼	19	16 S.	4 W.	160	.....
S. W. ¼	21	16 S.	4 W.	160	.....
S. E. ¼	33	11 S.	5 W.	.....	160
N. W. ¼	1	12 S.	5 W.	.....	159.61
S. E. ¼	11	12 S.	5 W.	.....	160
S. W. ¼	11	12 S.	5 W.	.....	160
N. E. ¼	9	14 S.	5 W.	.....	160
N. W. ¼	9	14 S.	5 W.	.....	160
N. E. ¼	27	14 S.	5 W.	.....	160
N. E. ¼	17	13 S.	6 W.	.....	160
S. E. ¼	11	15 S.	6 W.	.....	160
S. W. ¼	11	15 S.	6 W.	.....	160
N. W. ¼	13	15 S.	6 W.	.....	160
N. E. ¼ of N. W. ¼	15	15 S.	6 W.	.....	40
N. ½ of N. E. ¼	15	15 S.	6 W.	.....	80
6150 S. E. ¼ of N. E. ¼	15	15 S.	6 W.	.....	40
N. ½ of S. W. ¼	13	13 S.	7 W.	80	.....
S. W. ¼	33	13 S.	7 W.	.....	160
N. E. ¼	15	15 S.	7 W.	160	.....
S. E. ¼	15	15 S.	7 W.	160	.....
N. W. ¼	21	15 S.	7 W.	160	.....
W. ½ of N. E. ¼	21	15 S.	7 W.	80	.....
N. W. ¼	23	15 S.	7 W.	160	.....
N. W. ¼	25	16 S.	8 W.	160	.....
N. W. ¼	27	16 S.	8 W.	160	.....
N. E. ¼	19	16 S.	9 W.	.....	160
Total Acres	.....	.....	.....	2,631.98	3,072.24

upon all of which the said consolidated First Mortgage of May 1, 1879, is a valid and subsisting first and paramount lien.

XVI. *Securities held by trustees.*—That the complainants, as such Trustees, have in their possession the sum of three hundred and eleven thousand eight hundred and twenty-six dollars and thirty-five cents ($311,826.35) in cash, said money being the undisbursed balance of proceeds of land sales and payments upon land contracts and receipts from other sources provided in said Consolidated First Mortgage, upon which sum of money said Consolidated First Mortgage is a valid and subsisting first and paramount lien.

That since the execution of said Consolidated First Mortgage the twenty-nine thousand nine hundred eighty-six (29,986) shares
of the capital stock of the Denver Pacific Railway and
6151 Telegraph Company, mentioned in Schedule 2, attached to said mortgage, have been duly withdrawn and released from the operation of the lien created by said mortgage and said shares of stock are not now embraced in said Trust.

That the three hundred ninety-five (395) bonds of the Kansas Pacific Railway Company, secured by the second land grant mortgage, dated August 23, 1871, mentioned and described in said sched-

ule, have since the execution and delivery of said Consolidated First Mortgage been retired under the provisions of said Consolidated First Mortgage and said bonds secured by said land grant mortgage have been duly canceled.

XVII. *Denver & Boulder Valley Railroad.*—That since the delivery of said Consolidated First Mortgage by the said Kansas Pacific Railway Company and the execution of the trust reposed in said Trustees, the said complainants and their predecessors in office as such Trustees, acquired the ownership of certain stocks and bonds in the Denver & Boulder Valley Railroad Company, and by certain legal proceedings foreclosing the First Mortgage of said Railroad Company have since become the owners of the railroad which formerly belonged to the said Denver and Boulder Valley Railroad Company, together with all its franchises and property, and now hold title to the same as such Trustees, subject to the lien of the said Consolidated First Mortgage, and upon which the said Consolidated First Mortgage of May 1, 1879, is a valid and subsisting first and paramount lien.

XVIII. *Terminal property.*—That since the execution of said Consolidated First Mortgage by the Kansas Pacific Railway Company,
it, the said Kansas Pacific Railway Company, and its successor,
6152 the Union Pacific Railway Company and the Receivers of said
Union Pacific Railway Company, have purchased and acquired for the operation and maintenance of said railway at the City of Kansas City, Missouri, and the City of Denver, in the State of Colorado, and between said terminal points, certain other lands, rights of way, depots, stations, buildings and other things incident and appertaining to the operation of said railway; upon all of which property so purchased or acquired, said Consolidated First Mortgage of May 1, 1879, is a valid and subsisting lien.

XIX. *Default of Railway Co. under Consolidated First Mortgage.*—That the defendant, The Union Pacific Railway Company, made default in the payment of all of the interest and of the coupons representing such interest which became due on the first day of May, 1894, upon the Consolidated First Mortgage Bonds executed by the Kansas Pacific Railway Company and of which The Union Pacific Railway Company is the successor, although payment of interest due on that date was duly demanded by the holders of said bonds; and the said Union Pacific Railway Company made default in the payment of each subsequent semi-annual installment of interest which fell due upon said bonds at the time of the maturity thereof respectively, all of which said defaults still continue, and the following sums are now due and payable at the date of this decree for said coupons and interest on the same, viz:

Interest coupons due May 1, 1894	$351,720.00
Interest thereon to date of decree at 6%	68,585.40
Interest coupons due November 1, 1894	351,720.00
Interest thereon to date of decree at 6%	58,033.80
6153 Interest coupons due May 1, 1895	351,720.00
Interest thereon to date of decree at 6%	47,482.20

Interest coupons due November 1, 1895	$351,720.00
Interest thereon to date of decree at 6%	36,930.60
Interest coupons due May 1, 1896	351,720.00
Interest thereon to date of decree at 6%	26,379.00
Interest coupons due November 1, 1896	351,720.00
Interest thereon to date of decree at 6%	15,827.40
Interest coupons due May 1, 1897	351,720.00
Interest thereon to date of decree at 6%	5,275.80
Total	$2,720,554.20

That on the first day of May, 1894, the moneys in the hands of such complainants, as Trustees, were insufficient to enable them to pay the interest then due upon said bonds, and at no time since said 1st day of May, 1894, have said Trustees had sufficient funds in their hands as such Trustees, derived in any way from their said trust and the resources in said mortgage provided, to enable them to pay the interest so as aforesaid defaulted.

XX. That the defendant, The Union Pacific Railway Company, at the time it took the assignment, transfer, sale and conveyance from the said Kansas Pacific Railway Company of the railway and property of the said Kansas Pacific Railway, took the same subject to all the liens, charges and equities pertaining thereto, and now holds the title, subject to the lien created by the said Consolidated First Mortgage of the Kansas Pacific Railway Company.

XXI. *Kansas Division and Collateral Mortgage.*—That the defendant The Union Pacific Railway Company, on or about the 1st day of May, 1891, executed its certain other mortgage or deed
6154 of trust and known as Kansas Division and Collateral Mortgage, by which it conveyed to the Mercantile Trust Company of New York as Trustee, among other property, the property mentioned and described in the mortgage executed by the Kansas Pacific Railway Company known as the said Consolidated First Mortgage, that the said Kansas Division and Collateral Mortgage, so executed to the said defendant, the Mercantile Trust Company, was made and is subject to the said Consolidated First Mortgage of the Kansas Pacific Railway Company and to the liens and other mortgages hereinbefore found to be existing upon said property.

That the said defendant The Union Pacific Railway Company, under and in accordance with the provisions of said Kansas Division and Collateral Mortgage, issued five million dollars ($5,000,000.00) of its bonds, in and by each of which said bonds the said The Union Pacific Railway Company promised to pay to bearer on the 1st day of May, 1921, the sum of one thousand dollars ($1,000.00), with interest thereon in the meantime at the rate of five per cent. per annum, payable semi-annually on the first days of May and November of each year. That upon said bonds being issued as aforesaid, the said Mercantile Trust Company certified the same as provided in said trust deed, and all of said bonds, amounting in the aggregate to five million dollars, are now outstanding and are a subordinate and inferior lien to that of the Consolidated First Mortgage bonds upon the property described in said Consolidated First Mortgage subject to the lien created by said Consolidated First Mortgage.

XXII. *Railway Co. insolvent; property indivisible.*—That in addition to the sums hereinbefore found to be due upon the
6155 several mortgages executed by the said Kansas Pacific Railway Company and its successor The Union Pacific Railway Company, the said defendant The Union Pacific Railway Company is indebted in large sums of money of which the payment is overdue; and bills are pending for the foreclosure of said Eastern Division First Mortgage for the sum of $2,486,575.61, principal and interest, found by the said Special Master to be due thereon; and for the foreclosure of the said Middle Division First Mortgage for the sum of $4,689,590.10, principal and interest, found by the said Special Master to be due thereon, and for the foreclosure of the said Subsidy Lien of the United States for the sum of $12,891,900.19, found by the said Special Master to be due thereon, and it has made default in the payment of said sums of money, and is unable to pay the same; and is wholly insolvent; and it is for the best interest of all concerned that all the said railroad, properties and franchises as hereinbefore described, embraced in and covered by said Consolidated First Mortgage, should be sold, as herein decreed, and that the proceeds thereof be applied to the payment of said indebtedness and bonds in due order and priority, as herein decreed. That the railroad, telegraph, rolling stock, equipment and franchises of The Union Pacific Railway Company embraced in said Consolidated First Mortgage are indivisible and are so situated and are of such a nature that the same cannot be sold in parcels without great injury to all the parties in interest, and that it is expedient that the same shall be sold as an entirety, as hereinafter provided.

XXIII. *Payment decreed.*—It is further *ordered, adjudged and decreed*, that the defendant, The Union Pacific Railway Com-
6156 pany, pay or cause to be paid within twenty days after the entry of this decree to the complainants, Russell Sage and George J. Gould, Trustees, for the use and benefit of the holders of interest coupons issued under and secured by the Consolidated First Mortgage of the Kansas Pacific Railway Company, dated May 1st, 1879, the amount hereinbefore found to be due and interest thereon, less the amount of $311,826.35 so as aforesaid found to be in the hands of said Trustees and applicable for the payment of interest upon said bonds; namely, the sum of $2,408,727.85 with interest thereon from the date of this decree to the date of said payment at the rate of six per cent. per annum.

Upon the payment of the said sum of $2,408,727.85 with interest thereon, to the complainants as such Trustees, said sum, together with the money now in the possession of said Trustees, shall be distributed among the respective holders of said interest coupons in payment of the sums so found to be due and decreed to be paid.

In case the said amounts shall be paid or caused to be paid by said The Union Pacific Railway Company, or by any defendant to this cause, as herein decreed, then any of the parties to this suit may

apply to this Court for such further relief and for such further orders and directions as may be just and equitable.

XXIV. *Foreclosure and sale ordered.*—It is further *ordered, adjudged and decreed*, that in default of such payment by the defendant the said Union Pacific Railway Company, or by some one claiming under it or by some one for its account, or by some of the defendants herein, within the time directed, as aforesaid, all the railroad,
6157 telegraph, franchises, rolling stock, lands and land grants and property of every kind and description embraced in and covered by the said Consolidated First Mortgage of the Kansas Pacific Railway Company, of May 1, 1879, together with all property of whatsoever kind and character, real or personal, that has since been acquired by the Union Pacific Railway Company or its Receivers, for use in the operation of said railroad as hereinbefore found, and all the securities and property of whatever kind or character held by the complainants as Trustees, as hereinbefore found, shall be sold as hereinafter directed, subject, however, to the mortgages and liens upon various portions of said property set forth in Article XIII of this decree, and therein declared and found to be prior and superior liens to the lien created by the Consolidated First Mortgage, and all the right, title, estate, interest and equity of redemption of said defendant The Union Pacific Railway Company and of the said Mercantile Trust Company, and of all persons claiming or to claim under either of said main defendants, since the date of said Consolidated First Mortgage, to wit: May 1, 1879, except the parties holding superior liens referred to in said Article XIII, and of the said Russell Sage and George J. Gould, Trustees, complainants herein, and of each and every defendant in this cause, of, in or to the said railroad, telegraph, franchises, rolling stock and property and every part and parcel thereof, and of all the right, title, estate, interest, and equity of redemption of all and each of the parties to this cause, of, in, or to the said securities and property of every kind and character and of every part and parcel thereof, shall be forever barred and foreclosed, saving and excepting, however, the subsidy lien of the United States,
6158 hereinbefore found upon the 393 9425/10000 miles of railroad and telegraph, in consideration of which its subsidy bonds were issued and upon the 51/100 of a mile of said railroad and telegraph in Missouri, and upon the rolling stock, fixtures and property of every kind and description appertaining to said portion of said railroad.

XXV. *Manner and terms of sale.*—Said railroads, telegraph, franchises, lands and land grants and all the property covered by and embraced in said Consolidated First Mortgage of May 1, 1879, as the same is hereinbefore described and defined, and all the securities, lands and property in the hands of said complainants as Trustees or to which they are entitled under said Consolidated First Mortgage and held by them subject to the lien created by said mortgage, shall be sold upon the conditions and in the manner hereinafter provided and directed, at public auction, to the highest bidder or bidders, upon the mortgaged premises at the passenger station of The Union

Pacific Railway Company in the City of Topeka, in the State of Kansas, on a day or days to be fixed by the Special Master hereinafter appointed; and public notice of such sale and the time and place thereof, together with the manner and the terms upon which the said sale is to be conducted, shall be given by the said Special Master by advertisement which shall describe briefly and in general terms the property to be sold, the time and place where the sale is to take place, and the conditions upon which it is to be conducted; which advertisement shall be published at least once in each week for the term of four successive weeks preceding the day of sale in at least one newspaper in each of the following cities, namely: New York City, New York, and Topeka, Kansas.

6159 The Receivers shall file with the Clerk of the Court at Topeka, within ten days after the entry of this decree, an approximate statement as nearly correct as they are able to make the same, of the amount of moneys in their hands, the amount of moneys owing to them and the amount of their liabilities fixed and contingent resulting from the operation of the mortgaged premises as they will be at the time of the sale, and the Master shall insert a brief summary of this statement in his notice of sale.

The properties constituting the premises embraced by and included in said Consolidated First Mortgage shall for the purposes of said sale be divided into four separate parcels, which parcels shall respectively be designated and embrace properties as follows:

Parcel 1. All and singular the lands not heretofore sold and conveyed by the Kansas Pacific Railway Company or its successor, the said Union Pacific Railway Company, and not released by the complainants from the lien of the said Consolidated First Mortgage, which have been granted to the Leavenworth, Pawnee and Western Railroad Company of Kansas by that name, or to the said Company by the name of the Union Pacific Railway Company, Eastern Division, or to the said Company by the name of the Kansas Pacific Railway Company or to the Union Pacific Railway Company, its successor, by the Congress of the United States by an act entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military and other purposes, approved July 1st, 1862," and the amendatory act of Congress, approved July 2d, 1864, and by the Act of Congress

6160 approved May 7th, 1866, entitled "A resolution extending the time for the completion of the Union Pacific Railway, Eastern Division," and by the Act of Congress, approved July 3d, 1866, entitled "An act to amend the aforesaid acts, approved July 1st, 1862, and July 2d, 1864," and by the Act of Congress approved March 3d, 1869, entitled "An Act to authorize the transfer of lands granted to the Union Pacific Railway Company, Eastern Division, between Denver and the point of its connection with the Union Pacific Railroad to the Denver Pacific Railway and Telegraph Company, and to expedite the completion of railroads to Denver in the Territory of

Colorado," and by any and all other acts of Congress making grants of lands to or for the benefit of the said Kansas Pacific Railway Company under any of its said names, or its successor, the said Union Pacific Railway Company, and any and all lands to which the said Union Pacific Railway Company, as the successor of the Kansas Pacific Railway Company, is or may be entitled under the said Acts of Congress or any of them, and all rights, titles, estates and interests therein in possession or in expectancy now existing or hereafter to accrue of the said Kansas Pacific Railway Company and its successor The Union Pacific Railway Company in and to the said lands granted by Congress as aforesaid, and to each and every part thereof, whether in this decree specifically described or not, as well as the right hereafter to receive from the United States any of the said lands granted as aforesaid, whether in place or in indemnity limits or by way of indemnity, together with all the right, title, interest, estate and claim of the said Kansas Pacific Railway Company or of the said Union Pacific Railway Company in and to
6161 the said lands or any part thereof, and all of the rights of the said companies or either of them hereafter to receive from the United States patents therefor.

Where the term "granted lands and land rights" is hereafter used in this decree, it shall be deemed to designate and embrace the property included in this parcel.

Parcel 2. All and singular the lands comprised and described in the first schedule attached to the said Consolidated First Mortgage called "Miscellaneous Lands," as hereinbefore found.

Where the term "miscellaneous lands" is hereafter used in this decree, it shall be deemed to designate and embrace the property included in this parcel.

Parcel 3. All and singular the stocks, bonds and securities embraced within the second schedule attached to said Consolidated First Mortgage and remaining subject to said trust as hereinbefore found, together with all other securities, stocks, bonds, contracts, notes, bills receivable, the railroad formerly belonging to the Denver and Boulder Valley Railroad Company, and property both real and personal of whatsoever kind or nature acquired by said trustees since the execution of the said Consolidated First Mortgage and held by them subject to the lien created by said mortgage as hereinbefore found.

Where the term "miscellaneous securities and property" is hereafter used in this decree, it shall be deemed to designate and embrace the property included in this parcel.

Parcel 4. All and singular the railroad and railroad property, line of telegraph and all property rights and franchises connected therewith or appurtenant thereto as hereinbefore found, including any property and income owned or received by the said Receivers
6162 as Receivers in this cause through the operation of the mortgaged premises, and any property acquired by the Receivers incident and appurtenant to said railroad and any property pur-

chased or acquired by the Receivers in said Ames cause for the operation or maintenance thereof.

Where the term "railroad property" is hereafter used in this decree, it shall be deemed to designate and embrace the property included in this parcel.

The said Special Master shall first offer for sale the properties embraced in said "Parcel 1," and shall note the highest bid therefor, and, in the event that such highest bid shall be less than the debt secured by said Consolidated First Mortgage for principal and interest, whether matured at the date of this decree or not, then said Special Master shall proceed to offer for sale the properties embraced in "Parcel 2," and shall note the highest bid therefor, and in the event that such highest bid, together with the highest bid for the property embraced in "Parcel 1," shall be less than the amount of said mortgage debt, then said Special Master shall proceed to offer for sale the properties embraced in "Parcel 3," and shall note the highest bid therefor, and in the event that such highest bid, together with the highest bids theretofore received upon said preceding offers, shall be less than the said mortgage debt, then said Special Master shall proceed to offer for sale the property embraced in "Parcel 4," and shall note the highest bid therefor, and in the event that such highest bid, together with the bids theretofore received upon said preceding offers, shall be less than the said mortgage debt, then the said Special Master shall thereupon proceed to offer the
6163 entire mortgaged premises for sale in one lot or parcel, being all of the said properties theretofore so separately offered by him. If the highest sum bid for the said mortgaged premises as an entirety shall exceed the aggregate amount of the highest separate bids which shall have been made for said premises as offered in parcels, then the Special Master shall accept the said bid for the said mortgaged premises as an entirety, but if the amount offered for said premises in gross or as an entirety shall be less than the said aggregate amount of said separate bids, then the said Special Master shall accept the said highest separate bids so noted by him if said bids shall amount to $8,000,000, the upset price herein fixed for the mortgaged premises, and if said separate bids shall not amount to said sum he shall not accept any of them.

XXVI. Said lands and land rights shall be offered in the following manner and upon the following terms:

1. All of said lands and land rights embraced in "Parcel 1," shall be offered for sale by said Special Master in single sections or subdivisions thereof, if there are any bidders for such sections or subdivisions thereof; and said Special Master shall announce at such sale that he will receive bids for any particular section or particular subdivision of any section of said lands. If there are no bidders for any particular section of said lands or sub-division thereof, then all said lands not sold in sections or sub-divisions thereof shall be offered for sale in one parcel by said Special Master. Said Special Master shall receive no bid from any one offering to bid for all of such lands and

rights who shall not first deposit with him as a pledge that he will make good his bid in case of acceptance, the sum of $50,000 in
6164 cash, and he shall receive no bid from any one offering to bid for any separate sections or subdivisions of sections of land who shall not first deposit with him, as a pledge that he will make good his bid, in case of acceptance of the same, the sum of $10 per section for each section, or a proportionate amount thereof for any subdivision of any section, for which said bidder desires to bid.

Purchasers of separate sections or subdivisions of sections under the preceding provisions shall take the same and title thereto free from the charges and liabilities specified in Article XXXIX of this decree.

The purchaser or purchasers at said sale or sales of said lands and land rights, made under any of the provisions of this decree, his or their successors or assigns, shall acquire, take, receive, hold and enjoy the full, absolute, indefeasible and complete right and title to said lands, and every part and parcel thereof, including all rights and title to said lands that heretofore were vested in the Kansas Pacific Railway Company or its successor The Union Pacific Railway Company, including also the right to acquire patents from the United States for the lands granted as aforesaid by Congress to aid in the construction and equipment of said railroad, and all other rights under such grant, as fully and completely as the defendant The Union Pacific Railway Company now holds or enjoys, or the Kansas Pacific Railway Company held or enjoyed at the time of the execution and delivery of said First and Second Land Grant Mortgages or said Consolidated First Mortgage, or at any time since was or is or may be entitled to hold or enjoy the same; it being the intention of this decree in this behalf to sell to the purchaser all of the lands
6165 granted as aforesaid by Congress to aid in the construction of said railroad not heretofore sold and conveyed by said Company and released by the complainants as Trustees, and all rights in, to, of, or concerning the same, in possession or expectancy, and to make such purchaser or his assignee the full and complete assignee of the said Company and of said several mortgages as to all lands sold under this decree in all respects whatever, free of any claims of the parties to this cause or any of them, whether said lands are particularly described in this decree of the Master's said report and the schedules attached thereto or not.

XXVII. *Said miscellaneous lands shall be offered for sale in the following manner upon the following terms:*

The miscellaneous lands embraced in said "Parcel 2" shall be offered for sale in one parcel and the said Special Master shall receive no bid from any one offering to bid for said lands who shall not first deposit with him as a pledge that he will make good his bid in case of acceptance the sum of $50,000 in cash.

XXVIII. *The miscellaneous securities and property embraced in "Parcel 3," shall be offered for sale as follows:*

Said miscellaneous securities and property embraced in said "Parcel 3" shall be offered in one parcel to the highest bidder or bidders.

The Special Master shall receive no bid from any one offering to bid for said property held by said Trustees and embraced in said "Parcel 3," unless such person so offering to bid shall have first deposited with the said Special Master as a pledge that he will make good his bid in case of its acceptance, the said sum of $50,000 in cash.

6166 XXIX. *Said railroad property embraced in "Parcel 4" shall be offered for sale in the following manner and upon the following terms:*

Said railroad property embraced in and covered by the Consolidated First Mortgage and embraced in said "Parcel 4" shall be offered as an entirety and in one parcel.

In so far as any sale or sales under this decree shall embrace and include that portion of the road which is described in and embraced by the Eastern Division Mortgage, the Middle Division Mortgage, the Denver Extension Mortgage and the Income Mortgage upon certain portions of said premises, and also the Subsidy Lien in favor of the United States, upon certain portions of said premises, as hereinbefore found, said sale shall be made subject, as to such portions, to the said prior and paramount liens as hereinbefore determined.

The Special Master shall receive no bid for said railroad property from any one offering to bid who shall not have first deposited with him, as a pledge that he will make good his bid in case of its acceptance, the sum of $350,000 in cash.

XXX. *The entire mortgage premises shall be offered for sale in the following manner and upon the following terms:*

If the granted lands and rights appertaining thereto, being the property embraced in "Parcel 1"; the miscellaneous lands, being the property embraced in "Parcel 2"; the miscellaneous securities and property embraced in "Parcel 3", and the railroad property embraced in "Parcel 4," shall together be offered for sale by the said Special Master as an entirety and in a single lot, under the

6167 foregoing provisions then the said Special Master shall receive no bid from any one offering to bid for said entire property and premises unless such person so offering to bid shall have first deposited with him, as a pledge that he will make good his bid in case of its acceptance, the sum of $500,000 in cash, provided, however, that any amount or amounts deposited by any person to qualify him as a bidder for any separate parcel or parcels shall be credited as part of the deposit hereby required to be made to qualify such person as a bidder for the entire mortgage premises.

The said Special Master shall accept no bid for said entire mortgaged premises less than the sum of $8,000,000, and unless such sum shall be bid therefor, or unless the aggregate amount of the highest separate bids for said parcels, as separately offered for sale, shall be equal to said last-mentioned amount, the Special Master may adjourn the sale and all sales provided to be made under this decree, and apply to the Court for further instructions.

XXXI. *Payments by the purchaser.*—Upon the acceptance of any bid made for any parcel of said mortgage premises, or for said entire mortgage premises, the person or persons making the same shall make payments in cash or in cash and Consolidated First Mortgage Bonds, or unpaid past due coupons appertaining thereto at the rate at which said bonds and coupons shall be receivable, as hereinafter provided, of the sum remaining due upon such bid after the application thereto of the amounts theretofore deposited, as follows:

Twenty-five per cent. (25%) of such amount remaining due on such bid shall be paid within thirty days after the confirmation
6168 of the sale; a further twenty-five per cent. (25%) of such amount shall be paid within forty days after such confirmation; a further twenty-five per cent. (25%) of such amount shall be paid within fifty days after such confirmation, and the further twenty-five per cent. (25%) of such amount shall be paid within sixty days after such confirmation; provided, however, that the purchaser or purchasers shall have the right to anticipate all or either of said payments by making the same, or any of them, at an earlier time or earlier times than herein fixed.

In case any bidder or purchaser shall fail to make good his bid upon its acceptance by the Special Master by making any of the additional payments, as hereinbefore provided, in consummation of his purchase, then the sums paid or deposited by such bidder or purchaser, as hereinbefore provided, shall be forfeited as a penalty for such failure, and shall be applied towards payment of the expenses of a resale and towards making good any deficiency or loss in case the property shall be sold at a less price upon such resale, and to any other and further purpose which the Court may direct.

Any party to this cause or any holder or holders of any of said Consolidated First Mortgage Bonds may bid and purchase at any sale under this decree.

If any sale for which a deposit has been made shall not be confirmed by the Court, such deposit shall be returned to the bidder, and the deposit of any unsuccessful bidder shall be returned to him when a bid has been accepted.

The Special Master shall have the power and right to, and may at the request of the complainants' solicitors, adjourn or post-
6169 pone any sale or sales under this decree from time to time, and may without further notice, proceed with said sale or sales on any day to which the same may have been postponed or adjourned, and may at his option give such further notice of such sale or of said postponement or adjournment as he may think proper or as the complainants may request.

XXXII. *How payments to be made.*—The balance of any purchase price not hereinbefore required to be deposited in cash may either be paid in cash or the purchaser may satisfy and make good the balance of his bid in whole or in part by turning in to be canceled or credited

said Consolidated First Mortgage Bonds and coupons to be paid out of the proceeds of sale upon distribution thereof, and such purchaser shall be credited therefor on account of the purchase price such sums in cash as would be payable on such bonds and coupons out of the proceeds of sale, if the whole amount of the purchase price were paid in cash.

Any deposits or payments required by the terms of this decree to be made in cash may be made by delivery of a certified check or checks, or certificate or certificates of deposit, upon any national bank or trust company, in favor of or to the order of said Special Master and satisfactory to him.

The Master may in his discretion accept temporarily, instead of the manual delivery of the bonds or coupons, the certificate of any Trust Company which he may select that it holds First Mortgage bonds or coupons secured by the mortgage of May 1st, 1879, subject to the order of the Master, and will deliver them to him on demand for cancellation or other disposition.

The Court reserves the right to resell the property or any
6170 parcel thereof upon such notice as the Court shall direct in case any purchaser shall fail or omit to make any payment on account of any purchase price, as hereinbefore required.

XXXIII. *Obligations assumed by the purchaser.*—The purchaser or purchasers, or his or their successors or assigns, shall, as part consideration and purchase price of the railroad property purchased under this decree, and in addition to the sums hereinbefore required to be paid, and paid, take the same and receive the deed or deeds therefor upon the express condition that he or they, or his or their successors or assigns shall pay, satisfy and discharge:

First: Any unpaid compensation, which has been or shall be allowed by the Court to the Receivers in this cause, or their solicitors and all unpaid indebtedness and obligations, if any such there be, which shall have been legally contracted or incurred by them in said cause, in the operation or on account of the railroad property embraced in said Consolidated First Mortgage of the Kansas Pacific Railway Company, at any time before the same shall be delivered to the purchaser or purchasers; and also any such unpaid compensation which has been or shall be allowed by the Court to the Receivers or their solicitors in the cause in which Oliver Ames, Second, Samuel Carr, and others are complainants, and The Union Pacific Railway Company, and others, are defendants, pending in this Court and known as the "Ames Cause," and all such unpaid indebtedness, obligations and liabilities of the said Receivers in said Ames Cause which shall have been allowed or legally contracted or incurred by the said Receivers in the operation of said property embraced in said
6171 Consolidated First Mortgage, and shall be properly chargeable to said property, to the extent to which the revenues and assets in the hands of said Receivers in said Ames Cause shall be insufficient to pay and discharge such compensation, indebtedness, obligations and liabilities in said cause.

Second. Any indebtedness or liability contracted or incurred by the defendant The Union Pacific Railway Company, or by the said Receivers in the said Ames Cause, in the operation of the railroad property covered by and embraced in the said Consolidated First Mortgage, prior to the appointment of the Receivers in this cause, which are superior in equity to said Consolidated First Mortgage aforesaid, and payment whereof was provided for by order of this Court, dated July 16, 1894, and the order of this Court dated February 23, 1895, in this cause, and which shall not, at the time of such delivery of possession, have been paid or satisfied out of the income of the property in the hands of the Receivers, upon the Court adjudging the same to be prior in lien to said Consolidated First Mortgage, and directing payment thereof; provided that suit be brought for the enforcement of such indebtedness or liability incurred by said Railway Company or Receivers within the period allowed by the Statute of Limitations applicable thereto, after such indebtedness or liability was contracted or arose.

XXXIV. Ib. *Mode of enforcement.*—In the event that the said purchaser or purchasers of said railroad property, or his or their assigns, shall refuse, after demand, to pay any such debt or liability, the person holding the claim therefor, when established by a Court of competent jurisdiction, may, upon fifteen days' notice to said
6172 purchaser or purchasers, their successors or assigns, file his petition in this Court to have said claim enforced against the property aforesaid in accordance with the usual practice in claims of a similar character; and such purchaser or purchasers, his or their successors or assigns, shall have the right to appear and make defense to any claim, debt or demand so sought to be enforced, and either party shall have the right to appeal from any judgment, decree or order made thereon or with respect thereto. Jurisdiction of this cause is retained by this Court for the purpose of the foregoing provisions of this decree, and the Court reserves the right to retake and resell said property in case the purchaser or purchasers, his or their successors or assigns, shall fail to comply with any order of this Court in respect to the payment of such prior indebtedness or liability within thirty days after service of a copy of judgment, decree or order requiring such payment; subject, however, to all rights of appeal and stay of proceedings provided by law or which are hereinafter set forth.

Such purchaser or purchasers, and his or their successors or assigns, shall have the right to enter his or their appearance in this Court or in any other Court, and he or they or any of the parties to this cause shall have the right to contest any claim, demand or allowance existing at the time of the sale, then undetermined, or any claim or demand which may arise or be presented thereafter which would be payable by such purchaser or purchasers, his or their successors or assigns, or which would be chargeable against the property purchased in addition to the amount paid by said purchasers at such sale, and may appeal from any decision relating to any such claim, demand or

allowance, and shall have and enjoy all rights to stay or super-
6173 sedeas as fully as if a party thereto.

Any unpaid compensation which has been or shall be allowed by the Court to the Receivers in this cause or their solicitors, and all the unpaid indebtedness and liability of the Receivers incurred in the management and operation of the mortgaged premises since October 13th, 1893, which is either established or unquestioned at the time of the delivery of the Master's deed, shall be then paid by the purchaser or his assigns without the proceedings contemplated by this article.

The purchaser or purchasers of said railroad property, his or their successors or assigns, shall have the right within ninety days after the confirmation of the sale and the delivery of the deed as hereinafter provided, to elect which of the leases and contracts sold with the railroad and other property and franchises, such purchaser or purchasers, his or their representatives or assigns, desire to assume and accept, and shall not be held to have assumed any of said leases or contracts which he or they shall elect not to assume and accept.

XXXV. *Application of proceeds of sale.*—It is further ordered, adjudged and decreed, That the funds arising from the sale of the said property and premises shall be applied as follows:

First: To the payment of the costs of this cause and of all proper expenses attending upon such sale or sales, including the compensation of the Special Master appointed to make the sale, and the payment of all charges, compensations, allowances and disbursements of the complainants, as Trustees, or of their predecessors in said trust or either of them, and each of their solicitors and counsel, and
6174 also all other proper charges on the trust estate, allowances, compensation and disbursements to parties or their counsel. All of the payments to be made under this subdivision may be hereafter fixed and allowed and taxed by the Court or under its direction.

The amount of $311,826.35 in cash, hereinbefore found to be in the hands of the Trustees, complainants herein, shall be applicable to and shall be applied, so far as necessary, to the payment of such allowances. Any excess thereof shall be added to the proceeds of sales of property under this decree and distributed as part of such proceeds under the provisions of this decree.

Second: A sum equivalent to interest at the rate of six per cent per annum, from the date of this decree to the date of payment to be fixed by the Special Master, upon the entire amount of the purchase price applicable to Consolidated First Mortgage Bonds and coupons, which shall not have been presented by the purchaser on account of his bid.

Third: The balance of the funds realized from such sale shall be applied to the payment of the amount herein decreed to be due at the date of this decree, to wit, $2,720,554.20, with interest thereon from the date of this decree to date of payment, and any balance of the purchase price of said property shall be applied in payment of the principal of the bonds secured by the said Consolidated First Mortgage, the Court finding it to be necessary to prevent the dismember-

ment of said property, and consequent great and irreparable injury to all parties and interests concerned, and to be agreeable with the provisions of the said mortgage in this behalf, and the complainants and the defendants the Union Pacific Railway Company and
6175 the Mercantile Trust Company, by their solicitors thereto consenting in open Court, it is accordingly here ordered, adjudged and decreed that all of the property embraced in and covered by said Consolidated First Mortgage should be sold as hereinbefore provided, and that any excess of the purchase price thereof over the sum now herein decreed to be due at the date of this decree shall be applied to the payment of the principal of the bonds secured by said mortgage, the said complainants having consented as aforesaid to receive such excess and to apply the same on such principal sum, and to rebate to the extent of such payment the interest which would thereafter by the terms of such bonds grow due thereon. If such excess is not sufficient to pay such principal in full, then such excess shall be applied pro rata on the said bonds. Any detached coupons for interest on said bonds shall be stamped in such manner as to indicate that they have been partially paid; or if paid in full, they shall be cancelled.

Fourth: If, after making all the foregoing payments, there shall be any surplus, then the same shall be applied as the Court shall thereafter order and direct.

When the Special Master shall be prepared to pay out of the proceeds of sale and moneys in his hands under this decree the bonds and coupons to be paid as above specified, he shall give notice of the time when and place where he will be prepared to make such payment, by publication for at least once a week, for two consecutive weeks, in a newspaper published in each of the following cities, viz.: Topeka, Kansas; New York, New York; and no holder of any claim to bonds and coupons of the payment of which notice shall have been so
6176 given, who shall fail to present the same for payment at the time and place specified, shall be entitled to the payment of any interest thereon after that date out of the proceeds of such sale.

The Master shall pay upon each bond and coupon presented to him for payment at or before the date fixed for payment in his notice, the amount applicable to the payment thereof, and he shall deposit in the registry of this Court an amount sufficient to pay the amount applicable to the payment of all said consolidated bonds and coupons which shall not be presented to him either in payment of the bid made for the property or for payment in cash, together with one per cent. of such amount for Clerk's fees, which shall be paid by the purchaser as a part of the costs herein. He shall report the amount applicable to the payment of each of said unpresented bonds and coupons and the numbers and amounts of such bonds, and thereafter the Clerk of the Court shall, upon the usual order of the Court, pay and stamp such unpresented bonds and coupons when presented to him, and he shall cancel any such bonds or coupons that are paid in full, and he shall

properly stamp the bonds and coupons that are but partly paid and return them to the party or persons presenting them without filing same. The amount credited to each bond presented in payment of the accepted bid and the amount paid upon each bond presented to the Master for payment shall be stamped on such bond by him as paid, and the coupons presented to him for either of such purposes shall be stamped paid or partly paid, as the case may be. The Master shall cancel all bonds and coupons that are paid in full by him.

XXXVI. *Master's deed: Its effect.*—It is further ordered, adjudged and decreed, that, upon payment of the purchase price
6177 by the purchaser or purchasers of said property, or upon the making of such provision for the payment thereof as the Court shall approve, the said Special Master making the sale shall execute and deliver a good and sufficient deed or deeds, conveying the property purchased to such purchaser or purchasers, or his or their successors or assigns, and that upon the execution and delivery of such deed or deeds, the grantee or grantees shall be let into possession of the premises conveyed, and that the said Receivers and any party to this cause who is in possession of any of the same, shall deliver such property over to the purchaser or purchasers, his or their successors or assigns, and shall deliver to the purchaser or purchasers of said railroad property and to his or their successors or assigns, any property acquired by the Receivers in the said Ames cause, or in this cause, for or appropriated by them to the use of the line of railroad in said Consolidated First Mortgage mentioned, that has not been applied, or shall not be applied, in pursuance of the orders of this Court. Such possession shall nevertheless be subject to the condition that this Court may retake and resell the property conveyed in case the purchaser or purchasers, his or their successors or assigns, shall fail to pay any balance of the purchase price remaining unpaid, or to comply with any other provision contained in this decree.

The purchaser or purchasers, and his or their successors or assigns shall, after such delivery of the premises and property purchased, hold, enjoy and possess the same and an absolute and indefeasible title thereto, together with all the rights, privileges, immuni-
6178 ties and franchises thereto appertaining, as fully and completely as the defendant The Union Pacific Railway Company has heretofore held, owned or enjoyed, or now holds, owns or enjoys the same and the purchaser or purchasers, and his or their successors and assigns, shall thereupon be entitled to have and to hold the said railroads, lands and premises so purchased and conveyed, free and discharged from all the liens, claims and charges of each and every defendant herein, and of all the parties to this suit and those claiming under them, except only as hereinbefore expressly reserved.

XXXVII. *Deed by railway company and trustees.*—The defendant The Union Pacific Railway Company shall at the time of the execution of the said deed or deeds by said Special Master, as a further assurance to the purchaser or purchasers execute its deed, or deeds, or join with the said Special Master in the execution of the

deed or deeds to be made by him, and shall thereby convey and release to the purchaser or purchasers and his or their successors or assigns, all its right, title and interest in and to the property conveyed by said Special Master to the said purchaser or purchasers.

The said complainants, Russell Sage and George J. Gould, as Trustees under said Consolidated First Mortgage of May 1, 1879, hereby foreclosed, shall likewise at the time of the execution of said deed or deeds transfer and release to such purchaser or purchasers and his or their successors or assigns, all their right, title and interest under the said Consolidated First Mortgage in and to the property so conveyed; and the Receivers heretofore appointed in said Ames cause and in this cause shall make and deliver a sufficient deed or
6179 deeds conveying and assigning to the purchaser or purchasers and his or their successors or assigns all their right, title and interest in, of or to any property vested or standing in their names or to which they have acquired title as such Receivers in the management and operation of the premises covered by and embraced in said Consolidated First Mortgage and conveyed to such purchaser or purchasers.

XXXVIII. *Conveyance by trustee.*—It is further ordered, adjudged and decreed, that the complainants, Russell Sage and George J. Gould, shall deliver to the purchaser or purchasers thereof all and singular the securities, stocks, bonds, credits, accounts and bills receivable held by them in trust under said Consolidated First Mortgage; and shall likewise convey and release to the purchaser or purchasers thereof, his or their successors or assigns, by good and sufficient deed or deeds of conveyance, all real estate and all other property held by them as such Trustees. Upon the said Trustees paying over the moneys in their hands as above decreed and delivering the securities, stocks, credits, accounts and bills receivable held by them in trust as aforesaid and making the conveyance or conveyances above required, the said Trustees shall, thereupon, stand released and discharged from the said trust and from all obligations and liabilities in respect thereof except as to moneys or property hereafter coming into their hands as such Trustees.

XXXIX. *Re-deficiency judgment.*—It is further ordered, adjudged and decreed, That in case the proceeds of such sale or sales shall not be sufficient to pay in full the amounts hereinbefore found to be due upon said Consolidated First Mortgage bonds and
6180 coupons, then the said Special Master shall report to the Court the amount of the deficiency, and on the confirmation of said report said complainants as Trustees under said Consolidated First Mortgage shall have judgment against the defendant The Union Pacific Railway Company for the amount of the deficiency due upon said bonds and coupons, and shall have execution therefor pursuant to the rules and practice of this Court.

XL. *Special master appointed.*—It is further ordered, adjudged and decreed, That William D. Cornish, of St. Paul, Minnesota, be, and he is hereby appointed Special Master to execute this decree and

to make the sale or sales and to execute and deliver the deed or deeds of conveyance of the property sold to the purchaser or purchasers thereof upon confirmation of said sale or sales and payment of the purchase prices thereof, as herein provided, and this Court reserves the right at any time to appoint another Master with the same powers as the one herein appointed, in case of the inability for any reason of the Special Master herein appointed to act or perform the duties of his office or in reference to his office. As soon as any sale or sales have been made by such Special Master in pursuance of this decree, he shall report the same to this Court for confirmation, and shall from time to time thereafter make such further and supplemental reports as shall be necessary to keep the Court and the parties to this cause properly advised of his proceedings in the execution of this decree.

XLI. *Matters reserved.*—It is further ordered, adjudged and decreed, that all issues, questions, matters and things not hereby disposed of, including the discharge of the Receivers and the state-
6181 ment and settlement of their accounts, are hereby reserved by this Court for its future adjudication; and that any party to this cause may at any time apply to this Court for further relief at the foot of this decree in respect to matters not therein specifically provided for.

WALTER H. SANBORN,
U. S. Circuit Judge, Eighth Circuit.

Mr. LOVETT. It is stipulated that an ancillary bill of complaint in the same suit was filed in the Circuit Court of the United States for the Western District of Missouri and the District of Colorado, and that upon July 30 and 31, 1897, decrees of foreclosure, substantially in the form of Defendants' Exhibit 27, were rendered in such ancillary suits.

It is stipulated that, pursuant to the said decrees of foreclosure, the property covered thereby was sold, on the 19th day of February, 1898, to Alvin W. Krech and Lawrence Greer, for the sum of three million dollars, and that said sale was duly reported by the Special Master making the same, to the Court.

I now offer in evidence Defendants' Exhibit 28, being a copy of order confirming said sale.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 28 is as follows:

6182 DEFENDANTS' EXHIBIT 28.

(Titles of court and cause omitted.)

And now at this date this cause coming on to be heard upon the motion of Alvin W. Krech and Lawrence Greer, purchasers of the railroad property and franchises sold on February 19th, 1898, under the decree of foreclosure and sale entered herein on July 30th, 1897,

for confirmation of the Special Master's report of sale filed herein on February 19th, 1898, and the sale therein reported, and it appearing to the Court that the Special Master's report of sale was filed herein on February 19th, 1898, and that no exceptions to said report have been filed herein by any of the parties to this cause, and the Court being fully advised in the premises, on motion of Winslow S. Pierce, solicitor for the petitioners herein, it is hereby

Ordered that the Special Master's report of sale, filed herein on the 19th day of February, 1898, be, and it is hereby in all things, ratified, approved and confirmed and that the sales therein reported be and they are hereby made absolute, subject, however, to all the terms and conditions of the decree of foreclosure entered herein on July 30th, 1897, and subject also to the due performance by the purchasers at said sales, their successors or assigns, of all the obligations therein prescribed, unless cause to the contrary is shown before me at my chambers in the Federal Court Building, in the City of St. Paul, Minnesota, on the 14th day of March, 1898, at 10.30 o'clock in the forenoon or as soon thereafter as counsel can be heard;

Further ordered that a copy of this order be served upon all the parties to this cause or upon the solicitors of such parties.

6183 WALTER H. SANBORN,
Circuit Judge.

Dated March 5th, 1898.
Filed March 8, 1898, in Kansas Court only.

Mr. LOVETT. I now offer in evidence copy of an assignment by Krech and Greer of their bid, to the Union Pacific Railroad Co., being Defendants' Exhibit 29.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 29 is as follows:

DEFENDANTS' EXHIBIT 29.

(Kansas Pacific Consolidated.)

ASSIGNMENT OF BID.

Know all Men by these Presents, That

Whereas, in a certain cause pending in the Circuit Court of the United States for the District of Kansas, in which Russell Sage and George J. Gould, Trustees, are complainants, and The Union Pacific Railway Company and others, are defendants, a certain decree of foreclosure and sale was entered by the said Court on the 30th day of July, 1897; and

Whereas, in certain causes ancillary thereto and pending in the Circuit Courts of the United States for the Western District of Missouri and the District of Colorado, in which causes said Russell Sage and George J. Gould, Trustees, are complainants, and

6184 said The Union Pacific Railway Company and others are de-

fendants, certain decrees were entered by said Courts on the following dates respectively, to wit—in the Circuit Court of the United States for the Western District of Missouri on the 30th day of July, 1897, and in the Circuit Court of the United States for the District of Colorado on the 31st day of July, 1897, by each of which said decrees, it was, among other things, adjudged and decreed that the decree rendered in said cause by the United States Circuit Court for the District of Kansas be rendered and pronounced as the decree of the said Courts respectively in said ancillary causes and should be executed upon the terms and conditions therein prescribed, and that the execution of said decree rendered by said Circuit Court of the United States for the District of Kansas, according to its terms and conditions, should be deemed and held to be the execution of the decrees of the said Courts in said ancillary causes in all respects whatsoever; and

Whereas, by said decrees it was, among other things, adjudged and decreed that the said The Union Pacific Railway Company pay or cause to be paid within twenty days after the entry of said decrees to the complainants in said causes for the use and benefit of the holders of interest coupons issued under and secured by the Consolidated First Mortgage bonds of the Kansas Pacific Railway Company issued under and secured by the Consolidated First Mortgage of said Company dated May 1st, 1879, the amount in said decrees found to be due and interest thereon, and that in default of such payment within said time all the railroad, telegraph, franchises, rights, rolling stock,
lands and land grants and property of every kind and de-
6185 scription embraced in and covered by said Consolidated First
Mortgage should be sold as in said decrees directed by William D. Cornish, the Special Master appointed by said decrees, at public auction to the highest bidder or bidders upon the mortgaged premises, at the passenger station of The Union Pacific Railway Company in the City of Topeka, in the State of Kansas, on a day or days to be fixed by the said Special Master, after giving notice of said sale, as in said decrees specified; and

Whereas, neither the said The Union Pacific Railway Company, nor any one claiming under it, nor any one for its account, nor any one of the defendants in said causes, paid or caused to be paid within the time directed in said decrees, or at any other time, the amount therein found to be due as aforesaid; and

Whereas, the said Special Master, in pursuance of said decrees, due notice having been given as therein prescribed and according to law, did duly sell at public auction upon the mortgaged premises at the passenger station of The Union Pacific Railway Company in the City of Topeka in the State of Kansas, on the 19th day of February, 1898, all and singular all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock and property of every kind and description, herein called the Railroad Property, embraced in and covered by said Consolidated First Mortgage and in the said decrees described and embraced in

Parcel Four as therein defined, to Alvin W. Krech and Lawrence Greer for the sum of $3,000,000; the said Alvin W. Krech and Lawrence Greer being the highest and best bidders for said Railroad Property at said sale and having duly and seasonably qualified as bidders at said sale, as required by said decrees in that behalf; and

6186 Whereas, the said Special Master did duly make and file his Report of said sale in the said several Courts, which said report and the sales therein reported have been, upon due notice, by orders of the said several courts, duly confirmed; and

Whereas, the said Alvin W. Krech and Lawrence Greer have in all respects to the date of these presents complied with the provisions of the said decrees of foreclosure and sale and have made payment of the purchase price for said Railroad Property; and

Whereas, in said decrees it is, among other things, provided that upon payment of the purchase price by the purchasers of said property, or upon making such provision for the payment thereof as the Court should approve, the said Special Master making the sale shall execute and deliver a good and sufficient deed or deeds conveying the property purchased to the purchaser or purchasers or his or their successors or assigns; and

Whereas, the Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, is desirous of acquiring, and is authorized to acquire the said bid or contract of purchase of said Alvin W. Krech and Lawrence Greer, and all their rights thereunder, including their right to receive a deed or deeds pursuant to the said decrees, for the said Railroad Property purchased by the said Alvin W. Krech and Lawrence Greer at the said sale; and the said Railroad Company has made and has agreed to make payment and provision for the payment for said Railroad Property satisfactory to said Alvin W. Krech and Lawrence Greer, and has agreed to perform and assume all of the obligations required by said decrees and orders to be performed and assumed by said Alvin W. Krech and Lawrence Greer by reason of their said

6187 bid and purchase at said sale.

Now therefore these presents witness:

That the undersigned, Alvin W. Krech and Lawrence Greer, in consideration of the premises, and other good and valuable considerations, have sold, assigned, transferred and set over and hereby do sell, assign, transfer and set over unto said Union Pacific Railroad Company, its successors and assigns, their said bid and their right to receive conveyance of the said Railroad Property so purchased by them and all their other rights under said decrees or by virtue of their said bid and purchase in and to said Railroad Property, being all the railroad, telegraph, franchises, rights, functions, immunities, rolling stock and property of every kind and description embraced in and covered by the said Consolidated First Mortgage, which is embraced in Parcel Four as defined in said decrees and is herein known as the Railroad Property.

To have and to hold the same unto the said Union Pacific Railroad Company, its successors and assigns, to its and their own use forever; subject, however, to all the conditions, restrictions and reservations in said decrees set forth, and subject, further, to the performance in the manner set forth in said decrees by the said Union Pacific Railroad Company, of all the acts and things required by said decrees to be performed by the said purchasers at said sale of said Railroad Property and now remaining unperformed, and said Alvin W. Krech and Lawrence Greer do hereby direct and request that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers of said Railroad Property at said sale, or his or their successors or assigns, conveying and releasing said Railroad Property embraced in said parcel four as in
6188 said decrees provided, be made and delivered to said Union Pacific Railroad Company, its successors and assigns.

And these presents further witness that:

Union Pacific Railroad Company hereby accepts the foregoing assignment and covenants and agrees to pay, satisfy and discharge, and to indemnify and forever hold harmless said Alvin W. Krech and Lawrence Greer, their executors and administrators, from and against any and all losses, damages, expenses and liabilities whatsoever which may have been incurred, or hereafter may be incurred, by said Alvin W. Krech and Lawrence Greer, or either of them, by reason of their said bid for said Railroad Property embraced in said Parcel Four, and the acceptance thereof or by reason of any acts and things required by said decrees or said orders confirming said sale to be performed by said Alvin W. Krech and Lawrence Greer.

Ten originals of this instrument have been executed, each of which shall be deemed an original and all collectively as one instrument.

In witness whereof, the undersigned, Alvin W. Krech and Lawrence Greer have hereunto set their hands and affixed their seals, and Union Pacific Railroad Company has caused these presents to be executed by its President and its corporate seal to be hereto affixed attested by its Secretary this 21st day of March, 1898.

ALVIN W. KRECH, (SEAL.)
LAWRENCE GREER, (SEAL.)
Purchasers.

In presence of:
WALTER S. WILSON.

UNION PACIFIC RAILROAD COMPANY,
(SEAL.) By HORACE G. BURT,
President.

Attest:
ALEX. MILLAR,
Secretary.

6189 Mr. LOVETT. I now offer Defendants' Exhibit 30, being copy of the deed from William D. Cornish, Special Master, and others, to the Union Pacific Railroad Company, dated March 22, 1898, conveying the railroad property, with its appurtenances, so purchased by said Krech and Greer.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 30 is as follows:

DEFENDANTS' EXHIBIT 30.

Indenture, made the twenty-second day of March, A. D. 1898, between

William D. Cornish, of St. Paul, Minnesota, as Special Master appointed by the decrees entered in the causes hereinafter mentioned by the Circuit Courts of the United States for the District of Kansas, the Western District of Missouri and the District of Colorado—party of the first part;

Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers of the property of The Union Pacific Railway Company, appointed by the said Circuit Courts of the United States in the causes hereinafter mentioned—parties of the second part;

Russell Sage and George J. Gould, as trustees under the mortgage or deed of trust hereinafter mentioned, executed by The Kansas Pacific Railway Company and bearing date the 1st day of May, 1879—parties of the third part:

The Union Pacific Railway Company, a corporation formed by the consolidation of The Union Pacific Railroad Company,
6190 with the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company,—party of the fourth part;

Alvin W. Krech and Lawrence Greer, both of the City of New York,—parties of the fifth part; and

Union Pacific Railroad Company, being a new corporation or body politic and corporate organized and existing under and pursuant to the laws of the State of Utah,—party of the sixth part;

Whereas, the Leavenworth, Pawnee and Western Railroad Company, was duly incorporated and organized under and by virtue of an Act of the Legislature of the Territory of Kansas, enacted in the year 1853, and entitled "An Act to incorporate the Leavenworth, Pawnee and Western Railroad Company," and an Act supplemental thereto, approved February 23d, 1857; and was authorized to locate and construct a railroad from the west bank of the Missouri River in the town of Leavenworth, Kansas, and from thence west to the Town of Pawnee or some point feasible and near to the Government Reservation of Fort Riley, with the privilege of extending the same to the western boundary of the then Territory of Kansas and to construct a branch road to the town of Kickapoo on the Missouri River; and

Whereas, said Leavenworth, Pawnee and Western Railroad Company, by an act of the Congress of the United States entitled "An

Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military and other purposes," approved July 1st, 1862, was authorized to construct a railroad and telegraph line from the Missouri River at the mouth of the Kansas River on the south side thereof so as to connect with the Pacific Railroad of Missouri to a point on the 100th meridian of
6191 Longitude west from Greenwich; and

Whereas, on or about June 6th, 1863, the name of said Leavenworth, Pawnee and Western Railroad Company, under authority of an Act of the Legislature of the State of Kansas entitled "An Act relating to Railroad Companies," approved March 5th, 1862, was changed to "Union Pacific Railway Company, Eastern Division;" and

Whereas, in the year 1869 said Union Pacific Railway Company, Eastern Division, pursuant to due corporate action and as thereto authorized by law, changed its name to that of the "Kansas Pacific Railway Company;" and

Whereas, in pursuance of law, said Union Pacific Railway Company, Eastern Division (being the same company as the one afterwards known as Kansas Pacific Railway Company), having first designated the general route of said railroad and filed a map thereof, began and the said Kansas Pacific Railway Company completed a line of railroad and telegraph from Kansas City in the State of Missouri at a connection with the Pacific Railroad of Missouri on the south side of the Missouri River at the mouth of the Kansas River to Denver in the State of Colorado, with spurs to Wyandotte and at Detroit in Kansas, all in the manner, and upon the conditions, within the times, and upon the provisions and consents contemplated, defined and prescribed by law; and

Whereas, the said Kansas Pacific Railway Company, on or about the 1st day of May, 1879, executed a mortgage or deed of trust (hereinafter called its Consolidated First Mortgage), bearing date the 1st day of May, 1879, whereby it conveyed to Jay Gould and said Russell Sage, as trustees, and to their successors, all and singu-
lar the railroad, telegraph, lands, property and franchises in
6192 the said mortgage described (the same being embraced in the railroad property and franchises hereinafter described and conveyed), to secure certain bonds of said Railway Company (herein called its Consolidated First Mortgage Bonds), of which there were issued and outstanding on the 30th day of July, 1897, bonds to the aggregate amount of $11,724,000 principal, besides interest thereon; and

Whereas, George J. Gould (one of the parties of the third part to this Indenture) was duly appointed substituted trustee under the said Consolidated First Mortgage in place of said Jay Gould, deceased, and said Russell Sage and George J. Gould at the time of filing their bill of complaint hereinafter mentioned were, and now are, the trustees under said Consolidated First Mortgage; and

Whereas, on or about the 24th day of January, 1880, said Kansas Pacific Railway Company, under and pursuant to acts of Congress in that behalf, was consolidated with The Union Pacific Railroad Company and the Denver Pacific Railway and Telegraph Company, and by such consolidation said The Union Pacific Railway Company (party of the fourth part hereto) was formed and became the successor to said Kansas Pacific Railway Company, which executed the Consolidated First Mortgage aforesaid; and

Whereas, said The Union Pacific Railway Company having become insolvent and having made default in the payment of certain interest which became due on the 1st day of May, 1894, and each subsequent installment of interest and of the coupons representing such interest, on the Consolidated First Mortgage bonds, secured by the
6193 said Consolidated First Mortgage, the said Russell Sage and George J. Gould, trustees as aforesaid, filed in the Circuit Court of the United States, for the District of Kansas, their bill in equity against The Union Pacific Railway Company, The United States of America, and various other defendants, to foreclose the said Consolidated First Mortgage, and such proceedings were thereupon had in the said cause that, on the 30th day of July, 1897, a certain decree of foreclosure and sale was entered by said Circuit Court of the United States for the District of Kansas, wherein and whereby it was adjudged and decreed that The Union Pacific Railway Company pay, or cause to be paid, within twenty days, after the entry of said decree, certain amounts therein found to be due under the said Consolidated First Mortgage, and that, in default of such payment by said The Union Pacific Railway Company, or by some one claiming under it, or for its account, or by some of the defendants in the said cause, within the time aforesaid, the said mortgaged premises, property and franchises should be sold as provided in the said decree; and

Whereas, similar and ancillary causes were pending between the same parties in the Circuit Courts of the United States for the Western District of Missouri and the District of Colorado (except that in said cause pending in the Circuit Court of the United States for the District of Colorado, the United States of America are not parties defendant), in each of which districts portions of the mortgaged premises, property and franchises were situate, and said decree entered by the Circuit Court of the United States for the District of Kansas, on the 30th day of July, 1897, was adopted, rendered and announced as the decree of said other courts in said similar
6194 and auxiliary causes therein pending by decrees rendered by such courts, respectively, on the following dates—viz.: By said Circuit Court of the United States for the District of Missouri, on the 30th day of July, 1897, and by said Circuit Court of the United States for the District of Colorado on the 31st day of July, 1897—to which said several suits, and to the proceedings and record thereof in each of the said courts, including said Circuit Court of the

United States for the District of Kansas, reference is hereby made; and

Whereas, neither The Union Pacific Railway Company nor any one claiming under it, nor any one for its account nor any of the defendants in either of the said causes above mentioned within the time fixed in each of said decrees, or at any other time, made payment of the sums decreed as aforesaid or any part thereof; and

Whereas, by the decree and order of the Circuit Court of the United States for the District of Kansas, in the said cause therein pending, Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, parties hereto of the second part, were appointed receivers of the railroad, property and effects of The Union Pacific Railway Company, party of the first part hereto; and in and by decrees entered by said United States Circuit Courts, for the Western District of Missouri and the District of Colorado respectively, in said ancillary causes therein pending, the said parties of the second part hereto were appointed receivers of the railroad, property and effects of said The Union Pacific Railway Company for and within the territory and jurisdiction of said
6195 courts respectively, with the powers, responsibilities and duties conferred upon them by said decree and order entered by said Circuit Court of the United States for the District of Kansas appointing such receivers; and

Whereas, William D. Cornish, the party of the first part hereto, was in and by said decree of the Circuit Court of the United States for the District of Kansas, and in and by said ancillary decrees of the United States Circuit Court in and for each of the said other districts, appointed Special Master to execute said decrees and make the sales therein provided to be made and to execute and deliver deeds of conveyance to the purchaser or purchasers thereof upon confirmation of such sales and payment of the purchase price thereof as in said decrees provided; and

Whereas, said William D. Cornish, Special Master as aforesaid, gave due public notice in pursuance of said decrees and according to law of the time and place of the sale under said decrees and of the manner and terms upon which said sale was to be conducted, and duly complied with all the provisions of said decrees relating to such sale; and in pursuance of said decrees at the place specified therein—to wit, upon the mortgaged premises at the passenger station of The Union Pacific Railway Company in the City of Topeka, in the State of Kansas—did, on the 19th day of February, 1898, first offer for sale the properties embraced in parcel 1 as defined in said decrees and in said notice of sale (the lands and land rights so offered being offered in single sections or subdivisions thereof and announcement being then and there made by said Special Master that he would receive bids for any particular section or particular subdivision of any sec-
6196 tion of said land), and said Special Master noted the highest bids received for the properties embraced in said parcel 1; and the aggregate amount of the highest bids for the properties embraced

in said parcel 1 being less than the debt secured by said Consolidated First Mortgage, said Special Master then offered for sale the properties embraced in parcel 2 as the same are defined in said decrees and in said notice of sale, in one parcel, and noted the highest bid received therefor; and said highest bid so received for said properties embraced in said parcel 2, together with the aggregate of the highest bids received for the property embraced in said parcel 1, being in the aggregate less than said mortgage debt, said Special Master thereupon offered for sale the properties embraced in parcel 3 as the same are defined in said decrees and said notice of sale, and noted the highest bid received therefor; and said highest bid so received for said properties embraced in said parcel 3, together with the highest bids theretofore received upon said preceding offers being less than the said mortgage debt, thereupon said Special Master offered for sale all the property embraced in parcel 4, as defined in said decrees and said notice of sale, and noted the highest bid received therefor; and said highest bid so received for the property embraced in said parcel 4, together with the highest bids theretofore received upon said preceding offers, being less than the said mortgage debt said Special Master thereupon offered for sale, in one lot or parcel, the entire mortgaged premises as the same are described in said decrees and said notice of sale being all of the properties theretofore separately offered for sale as aforesaid, and no bid for said properties so offered as an entirety was made; and

6197 Whereas, all the lands, land rights and properties embraced in said parcel 1 were duly sold at said sale to Alvin W. Krech and Lawrence Greer for sums amounting in the aggregate to $2,004,800, their bids being the highest bids received and noted therefor, and they having deposited with the Special Master, before their bids were received by him, the sum of $50,040 in cash, as a pledge that they would make good their bids in case of the acceptance thereof; and all the miscellaneous lands and properties embraced in said parcel 2 were duly sold at said sale in one parcel to said Alvin W. Krech and Lawrence Greer for the sum of $300,000, their bid being the highest bid received and noted therefor, and they having deposited with the Special Master before their bid was received by him the sum of $50,000 in cash as a pledge that they would make good their bid in case of its acceptance; and all the miscellaneous securities and properties embraced in said parcel 3 were duly sold at said sale in one parcel to said Alvin W. Krech and Lawrence Greer for the sum of $3,000,000, their bid being the highest bid received and noted therefor, and they having deposited with the Special Master before their bid was received by him the sum of $50,000 in cash as a pledge that they would make good their bid in case of its acceptance; and all the railroad property embraced in and covered by said Consolidated First Mortgage and embraced in said parcel 4 was duly sold at said sale as an entirety and in one parcel to said Alvin W. Krech and Lawrence Greer for the sum of $3,000,000, their bid being the highest bid received and noted therefor, and they having deposited with the Special Master before

their bid was received by him the sum of $350,000 in cash as a
6198 pledge that they would make good their bid in case of its acceptance; the aggregate amount of such highest separate bids for said several parcels as separately offered for sale being the sum of $8,304,800; and

Whereas, afterwards, William D. Cornish, Special Master, as aforesaid, did duly make and file his report of said sales, to the said several courts, and by decrees entered by said Circuit Courts of the United States in said causes therein pending respectively, the said report of sale was in all things ratified, approved and confirmed and the sales therein reported made absolute, subject to all the terms and conditions of said several decrees of foreclosure and sale and to the due performance by the purchasers or their successors or assigns of all the obligations therein prescribed; and

Whereas, said Alvin W. Krech and Lawrence Greer, parties of the fifth part hereto, have in all respects complied with the provisions of the said decrees of foreclosure and sale, and have paid and made settlement of the purchase price as provided in said decrees and the orders of said courts; and

Whereas, said Alvin W. Krech and Lawrence Greer have duly assigned, transferred and set over to Union Pacific Railroad Company, the party of the sixth part to this indenture, their said bid for said railroad property embraced in and covered by said Consolidated First Mortgage and embraced in said Parcel 4 as defined in said decrees, and their right to receive conveyance thereof and all their other rights under the said decrees by virtue of their said bid for and purchase of the property embraced in said Parcel 4.

Now, therefore, this indenture witnesseth, That the said
6199 William D. Cornish, Special Master as aforesaid, party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid of said property embraced in said Parcel 4 under said decrees, and in pursuance of the aforesaid decrees, and in conformity to law and in consideration of the premises and of the payment and settlement as aforesaid of the said purchase price of the said property embraced in said Parcel 4 as provided in that behalf in said decrees and orders of said courts, has granted, bargained, sold, assigned, released, conveyed and confirmed, and by these presents does grant, bargain, sell, assign, release, convey and confirm unto the said Union Pacific Railroad Company, the party of the sixth part hereto and to its successors and assigns in fee simple forever, all and singular all the properties embraced in said Parcel 4, as defined in said decrees, being all and singular the railroad and railroad property, line of telegraph and all property, rights and franchises connected therewith or appurtenant thereto as found in said decrees to be covered by the said Consolidated First Mortgage of May 1st, 1879, including any property and income owned or received by said Receivers as Receivers in said causes through the operation of the mortgaged premises, and any property acquired by said Receivers incident and appurtenant to said railroad, and any

property purchased or acquired by said Receivers in the Ames cause hereinafter mentioned for the operation or maintenance thereof, the same being more particularly described as follows:

All the railroad, railroad right of way and railroad property of The Union Pacific Railway Company, commencing at the eastern terminus of the Kansas Division of The Union Pacific Rail-
6200 way in Kansas City, Missouri, being the point of connection thereof with the yards of The Union Depot Company at said Kansas City and extending westerly through the States of Missouri, Kansas and Colorado, to the northeast line of Eighteenth Street in Denver, Colorado, and including also the branch line of railway extending from a junction with said main line at a point about .16 of a mile east of Armstrong, Kansas, in a northeasterly direction to a terminus at the corner of Water and Freeman Streets in Wyandotte, Kansas, and also a branch line of railway extending from Leavenworth, Kansas, to a junction with said main line near Lawrence, Kansas, known as the Leavenworth Branch, and also a branch line of railway extending from a junction with said main line of railway about .19 of a mile east of Detroit, Kansas, in a southerly direction, a distance of 1.95 miles, consisting in all of 654.55 miles of railway; also the lots, yards, terminal grounds, shop grounds, station grounds, streets, alleys and other tracts of land owned, acquired or appropriated by or for the use of the said The Union Pacific Railway Company, or said Railway Companies to whose rights and property the said The Union Pacific Railway Company succeeded, for the purposes of its said line of railroad; also, shops, freight depots, office buildings, round-houses, and other structures and facilities upon said premises constructed or acquired for or used for the purposes of or in connection with said railway property; also the right of way, station, terminal and other grounds pertaining to or acquired for or used in connection with the properties of the said railroad along said line thereof, including lands the title to which stands in the names of Trustees for said The Union Pacific Railway Company; also,
6201 depots, engine houses, car houses, station houses, warehouses, machine shops, work shops and other structures and facilities thereon or connected therewith, constructed, appropriated or used for or in connection with said line of railway for the operation thereof, also switches, turn-outs, sidings and spurs constructed for or used in connection with said line of railway, also the lands and interests and easements in lands, pipes, pump houses, structures, pipe lines, appliances, water rights, facilities and easements of the said Railway Company pertaining to or connected with the water supply of said Railway Company upon or along said line of railroad; also the tools, appliances, fixtures, supplies and materials located on or along said line of railroad, or acquired or provided for use in connection therewith or for the purposes thereof; also locomotives, passenger cars, Pullman sleeping cars, dining cars, freight cars and other cars and the equipment and rolling stock and all interest of said The Union Pacific Railway Company in equipment and rolling stock

owned, acquired or provided by said Railway Company for the purposes of said line of railroad or necessary for the running and operation thereof, the same being 25% of all such equipment and rolling stock or interest in equipment and rolling stock owned or acquired by said The Union Pacific Railway Company, also all the line of telegraph, telegraph material, instruments, fixtures and appliances belonging to said Railway Company and located upon and provided for and pertaining to said line of railway; also, all furniture, fixtures, appliances, apparatus, supplies and material in the various offices of said Railway Company upon or remote from said line of railway, including the principal offices of said company at Omaha and Boston
6202 owned, acquired or provided for use in connection with said railroad and mortgaged premises embraced in said parcel 4; also the rights and property of the character as above described owned or provided for the common use of the several divisions of said railway Company's property, to the extent of the proportionate use and devotion thereof to the business and concerns of the said mortgaged premises embraced in said parcel 4; and also all the corporate rights and franchises of said Kansas Pacific Railway Company and its successor The Union Pacific Railway Company, so far as such property, rights, interests and franchises pertain to the said railroad, telegraph and mortgaged premises embraced in said parcel 4; also all the moneys, credits and property not herein otherwise specified, in the possession of or under the control of the said Receivers in said causes, or to which said Receivers are or may be entitled, which have been or may be derived by said Receivers from or on account of said mortgaged premises embraced in said parcel 4, or from the sale or other disposition of any of said mortgaged property embraced in said Parcel 4, or from the use or operation of said mortgaged premises embraced in said Parcel 4 by said Receivers, subject to the charges of the Receivers as specified in said decrees in respect thereof; also the rights and interests of said The Union Pacific Railway Company in or to property of every kind and nature whether of the character as hereinbefore described or otherwise, owned, acquired or provided for the use of said division of its railway property; said lands above referred to as standing in the names of trustees for the said The Union Pacific Railway Company and which are herein and hereby conveyed unto the party of the sixth part hereto, being described as follows:

6203 The following described property standing in the names of F. Gordon Dexter, Edwin F. Atkins and Oliver W. Mink, Trustees, and situate in Wyandotte County in the State of Kansas, viz.: Beginning at a point 659.6 feet south of a point on the north line of the southeast quarter of Sec. 15 of Township 11 South of Range 25 East, 132 feet east of the centre of said section, and northwest corner of said southeast quarter; thence south 422.8 feet to the north line of McAlpine's Addition to Armourdale, prolonged West; thence east on said prolongation and said north line 355.8 feet to the

east line of Sixth Street in said McAlpine's Addition; thence northerly on prolongation north of said east line 160 feet; thence east parallel with the north line of said McAlpine's Addition 275 feet to the northerly prolongation of the centre line of Fifth Street in said McAlpine's Addition; thence northerly on said prolongation of centre line of Fifth St. 130 feet; thence east parallel with the north line of said McAlpine's Addition 315 feet to the prolongation north of the centre line of Fourth Street in said McAlpine's Addition; thence northerly on said prolongation north of the centre line of said Fourth Street 132.8 feet to the north line of land owned by said Nicholas McAlpine, and thence West along north line of land of said Nicholas McAlpine 953.24 feet to point of beginning, being 6.11 acres, more or less.

The following described property standing in the name of Sidney Dillon, trustee, and situate in that part of the City of Lawrence formerly known as North Lawrence, in the County of Douglas, State of Kansas:

6204 A piece of land 16 ft. wide on Bridge Street in North Lawrence, being a part of the SE ¼ of the W ½ of Block No. 2, bounded and described as follows: Commencing at the SE corner of Bridge and Locust Streets in North Lawrence; thence running south 16 ft.; thence East 150 feet; thence north 16 feet to the South line of Locust Street; thence West 150 feet to the place of beginning.

The North ⅔ of the south ½ of the NE ¼ of the W ½ of Block No. 2, less 37½ feet wide off the north side of said above-described land, being .22 acres, more or less.

The following described property standing in the names of F. Gordon Dexter, Edwin F. Atkins and Oliver W. Mink, Trustees, and situate in that part of the City of Lawrence known formerly as North Lawrence, in the County of Douglas, State of Kansas:

6205 Commencing at the southwest corner of the one-sixth part of the northeast quarter of the west ½ of Block 2, deeded to John Petty on the 10th day of June, 1864, by Martha Robinson (the said one-sixth lying south of and adjoining the one-third of said Block deeded to Uriah B. Adams by deed dated June 6th, 1864); thence running North on the east line of Bridge Street in said City, 20 feet; thence east to the east line of the said west half of block 2; thence South 57½ feet; thence west to the east line of Bridge Street aforesaid; thence north 37½ feet to the place of beginning being all the interest conveyed to Sidney Dillon in trust by N. N. Brown and wife by deed dated Jan. 28, 1884, and recorded in book 33 at page 236 of the records of said Douglas County. Also commencing at the southwest corner of the north one-third of the northeast quarter of the west half of Block 2 thence running south on the east side of Bridge Street, 30 feet; thence east to the east line of said West half of Block 2; thence north 30 feet; thence west to the East line of Bridge Street, to place of beginning, being the same property conveyed to the said Sidney Dillon in trust by J. W. Petty

et al by deed dated Nov. 10, 1883, and recorded in Book 33 at page 275 of the records of said Douglas County.

Also all of the Northeast quarter of the west half of Block 2, as conveyed to the said Dillon, Trustee, by Martha Robinson by deed dated Dec. 19, 1883, and recorded in Book 33, at page 201 of the records of said Douglas County.

Also the south 144 feet of the southeast quarter of the west half of Block 2, as conveyed to said Dillon, Trustee, by William T. Sinclair and wife, by deed dated Jan. 7, 1884, and recorded in Book 33 at page 266 of the records of Douglas County.

Also the south one-sixth part of the Northeast quarter of the west half of Block 2 (said one-sixth being sometimes designated as Lots 56, 58 and the south 3 feet 10 inches of Lot 60 on Bridge Street); also that part of the southeast quarter of the west half of Block 2 (sometimes known and designated as the North 20 feet of Lot 44, all of Lot 46, and the south 10 feet of Lot 48 on Bridge Street).

Also Lots 95, 97 & 99 on Locust Street, all of the above being the same property conveyed to the said Dillon, Trustee, by Eline Weingartner (single) by deed dated Jan. 7, 1884, and recorded in Book 33 at page 254, of the records of Douglas county aforesaid. Also the east half of the northeast quarter of Block 2, as conveyed to the said Dillon, Trustee, by Marcia M. Denman by deed dated Nov. 29, 1883, and recorded in Book 34 at page 401 of the records of Douglas County aforesaid.

Also the southeast quarter of the west half of Block 2 North as conveyed to the said Dillon, Trustee, by Alice V. Brown, Widow (formerly O'Neill), dated Jan. 5, 1884, and recorded in Book 36
6206 page 132 of the records of Douglas County, aforesaid.

Also the south 144 feet of the SE ¼ of the West half of Block 2, being the same property conveyed by Alice V. Brown to the said Dillon, Trustee, by deed dated November 24, 1883, and recorded in Book 33 at page 54 of the records of said Douglas County.

Also Lot 101 on Locust Street in Block 2 and Lot 100 on Elm Street in Block 2, as the same was conveyed to the said Dillon, Trustee, by Jabez E. Price and wife, by deed dated Dec. 3, 1883, recorded in Book 33 at page 234 of the records of Douglas County, aforesaid.

Also, the north one-third of the northeast quarter of the west half of Block 2, as conveyed to the said Dillon, Trustee, by Uriah B. Adams and wife by deed dated Nov. 16, 1883, and recorded in Book 33 on page 53 of the records of said Douglas County.

Also 35 feet of land on Bridge Street lying immediately North of the south 144 feet of the southeast quarter of the west half of Block 2, said land being described as follows: Commencing 157 feet south of the northeast corner of the southeast quarter of the west half of Block 2, thence running west 160 feet; thence south 35 feet, thence east 160 feet; thence north 35 feet to the place of beginning, it being the intention to convey all the interest in and to said southeast quarter of the west half of Block 2 aforesaid, as conveyed to said Dillon, Trustee by James Barry and wife by deed dated Dec. 7, 1883, and

recorded in Book 33 at page 123, of the records of Douglas County, aforesaid, being 3.69 acres more or less.

Also the west one-third of the southwest quarter of Block 12, being more particularly described as follows: Commencing in
6207 the centre of Mill Street and on the east side of Rhode Island Street, thence running east 118 feet; thence south 323 feet to the river bank; thence up the river to the east line of said Rhode Island Street; thence north 252 feet to the beginning, the last two parcels above described being the same property conveyed by Alice V. Brown to the said Dillon, Trustee, by deed dated Nov. 24th, 1883, and recorded in Book 33, at page 54 of the records of said Douglas County.

Also, the southwest quarter of Block 12, as conveyed to said Dillon, Trustee, by Mary E. Pierson (widow) et al., the heirs of Samuel R. Pierson, deceased, by deed dated Nov. 16, 1883, recorded in Book 33 at page 52 of the records of Douglas County, aforesaid.

Also, the southeast quarter of Block 12, bounded on the north by Mill Street, on the east by New York Street, on the south by the Kansas River and on the west by Connecticut Street, also, that part of Block 12, described as follows: Commencing in the centre of Connecticut and Mill Streets; thence west 199.63 feet; thence south 323 feet to Kansas River bank; thence down said River bank to centre of Connecticut Street; thence north 392 feet to beginning, as the same property was conveyed to the said Dillon, Trustee, by Mary E. Pierson (widow) et al., the heirs of Samuel B. Pierson, deceased, by deed dated the 16th day of Nov., 1883, and recorded in Book 33 at page 56 of the records of said Douglas County, being 3.79 acres more or less.

Also, all of their interest in and to Block 13, whether subdivided into lots or not, and including lot 2 on Bridge Street, in said block, as the same was conveyed to said Dillon, Trustee, by Martha Robinson (single) and C. Robinson and wife, by deed dated Jan. 15, 1884,
6208 recorded in Book 33 at page 323 of the records of said Douglas County.

Also, lots 100 and 102 on Northside of Mill street in Block 13, as conveyed to said Dillon, Trustee, by C. J. Anderson (single man), by deed dated Jan. 24th, 1884, and recorded in Book 34, at page 217 of the records of Douglas County aforesaid.

Also, Lot 109 on Mill Street, in Block 13, as conveyed to said Dillon, Trustee, by deed dated April 14, 1884, by Mary E. Pierson (widow) et al., the heirs of Samuel P. Pierson, deceased, recorded in Book 34, at page 371 of the records of Douglas County aforesaid.

Also, Lots 28 and 30 on Bridge Street, in Block 13; also the following: Commencing on the south line of Elm Street, at the northeast corner of lot 30 on Bridge Street, in Block 13; thence running south 50 feet; thence east to the west line of lot 97 in said Block 13; thence north 50 feet; thence west to the place of beginning, as the same was conveyed to the said Dillon, Trustee, by Ishmael Keith and

wife by deed dated Jan. 28th, 1884, and recorded in Book 33 at page 439 of the records of said Douglas County.

Also lots 95, 97 and 99 on Elm Street, and Lots 96 and 98 on Elm Street; also the south half of the southeast fractional quarter of Block 13, in said North Lawrence, as the above parcels were conveyed to said Dillon, Trustee, by William T. Sinclair and wife by deed dated Jan. 2, 1884, and recorded in Book 34 at page 544 of the records of said Douglas County.

Also Lots 97 and 99 on Elm Street and 117 on Mill Street, all in Block 13, as the same were conveyed to said Dillon, Trustee, by Helen M. Welch (widow) by deed dated Dec. 18, 1883, and recorded in Book 33 at page 168 of the records of said Douglas County.

6209 Also Lots 101, 104, 105, 106, 108, 109 on Mill Street in Block 13, as the same was conveyed to the said Dillon, Trustee, by Helen M. Welch, widow, by deed dated Dec. 18, 1883, and recorded in Book 33 at page 168, of the records of Douglas County, aforesaid.

Also, commencing at the southeast corner of Lot 24, on Bridge Street in Block 13; thence north 61 feet; thence east 123½ feet to the west line of Lot 95, on Elm Street; thence south 61 feet; thence west 123½ feet to the place of beginning, as conveyed to the said Dillon, Trustee, by Martha Robinson, by her attorney in fact C. Robinson by deed dated Jan. 8th, 1884, and recorded in Book 33 at page 256 of the records of Douglas County, aforesaid.

Also Lot 97 on Mill Street, as conveyed to the said Dillon, Trustee, by W. S. McCurdy, by deed dated Jan. 8, 1884, and recorded in Book 33 at page 253 of the records of said Douglas County.

Also Lots 113 and 117 on the south side of Mill Street in Block 13, as the same was conveyed to the said Dillon, Trustee, by J. D. Bowersock and wife by deed dated Jan. 8, 1884, recorded in Book 33 at page 313 of the records of said Douglas County.

Also lots 14 and 16 on Bridge Street in Block 13 as the same was conveyed to the said Dillon, Trustee, by Jabez E. Price and wife, by deed dated Dec. 3, 1883, and recorded in Book 33 at page 234 of the records of Douglas County, aforesaid.

Also lots 110, 112, 114, 116 and 118 on Mill Street, as conveyed to said Dillon, Trustee, by Henry F. Bissell for himself and as executor of the estate of Arabella Bissell by deed dated Jan. 18th, 1884, and recorded in Book 33, at page 375 of the records of Douglas County aforesaid.

Also lots 101 and 103 on Elm Street, in Block 13; also com-
6210 mencing 138.34 feet west of the North corner of Block 13; thence south 100 feet; thence west 50 feet; thence North 100 feet; thence east 50 feet to the place of beginning, said described land being known on filed plat of said North Lawrence as Lots 105 and 107 on Elm Street; commencing 30 feet east of Bridge Street in the southwest quarter of Block 13, at the east end of Lot 10; thence east 52½ feet; thence north 140 feet; thence west 53½ feet; thence south 140 feet to the place of beginning, being same parcels of land conveyed to the said Dillon, Trustee, by Mary J. Smith (single) by deed

dated Jan. 2nd, 1884, and recorded in Book 34 at page 543 of the records of Douglas County aforesaid.

Also Lot 99 on Elm Street, as the same was conveyed to said Dillon, Trustee, by Anna G. M. Kenger and husband by deed dated Nov. 26, 1883, and recorded in Book 33 at page 115 of the records of said Douglas County; also lots 24, 26 and the south 11 feet of lot 28, on the east side of Bridge Street, as the same were conveyed to said Dillon, Trustee, by James Nelson (widower) and Mary Nelson (single) by deed dated Nov. 16th, 1883, and recorded in Book 33, at page 170 of the records of said Douglas County, being 4.11 acres more or less.

Also the west one-fourth acre of the east one and one and one-half acre of said Block 15; also the west one-fourth acre of the east one and one-fourth acre of said Block 15, as the same was conveyed to said Dillon, Trustee, by Henry Lewis and wife by deed dated Jan. 7, 1884, and recorded in Book 33 at page 267 of the records of Douglas County, aforesaid.

Also, the east half of the following described tract of land, to wit: One acre of land situate in Block 15, described as Com-
6211 mencing at a point in the centre of First Street (properly known as Walnut Street) 30 feet south of the centre of the south line of Block 11; thence south to the Kansas River; thence easterly 8 rods; thence north to the centre of said Walnut Street; thence west 8 rods to the place of beginning, being all the interest in and to said Block 15 which was owned by Adolphus R. Smith and wife and by them conveyed to said Dillon, Trustee, by deed dated Jan. 8th, 1884, and recorded in Book 33 at page 273 of the records of said Douglas County.

Also part of Block 15, described as follows, to wit: Commencing in the centre of New York Street, at the northwest corner of said Block 15; thence running south to the Kansas River; thence East with said River 163 feet; thence north to Walnut Street; thence West 163 feet to beginning, as the same was conveyed to the said Dillon, Trustee, by Sarah Diskines and husband by deed dated Feb. 26th, 1884, and recorded in Book 33 at page 616, of the records of Douglas County, aforesaid.

Also, commencing at the Northeast corner of Block 15; thence West along Walnut Street 168 feet; thence south 330 feet; thence east 168 feet; thence north 330 feet to the place of beginning, containing one acre more or less, as the same was conveyed to the said Dillon, Trustee, by W. G. Bangs and wife, by deed dated Jan. 15, 1884, and recorded in Book 33 at page 320 of the records of said Douglas County.

Also commencing at a point in the south line of Walnut Street, midway between New York Street and Pennsylvania Street; thence westward on line of said street 168 feet; thence south to the Kan-
sas River; thence east 168 feet; thence north to the place of
6212 beginning, containing 1¼ acres, excepting the east 80 feet thereof, being the same property conveyed to the said Dillon, Trustee, by Hannah Melvin, widow, by deed dated Jan. 7th, 1884, and

recorded in Book 33 at page 252 of the records of said Douglas County.

Also all that parcel of land described as follows: Commencing at the Northeast corner of Block 15, and running thence 300 feet west for a beginning point; thence west along the south side of Walnut Street 80 feet; thence south 330 feet to the Kansas River; thence east 80 feet; thence north 330 feet to the south side of Walnut Street the place of beginning, being all their interest in and to said block 15 conveyed to said Dillon, Trustee, by Isaac F. Hughes and wife by deed dated Jan. 2, 1884, and recorded in book 33 at page 233 of the records of said Douglas County.

Also, all the interest formerly owned by Henry Lewis and wife in and to Block 15, being described in conveyances to said Lewis as being the west half of a tract described as commencing at a point in the center of First Street (now called Walnut Street) 30 feet south of the center of the South line of Block 11, thence south to the Kansas River; thence east 8 rods; thence north to the center of said First Street; thence West 8 rods to the beginning, being 2.87 acres more or less.

Also, Lots 1, 2 and 3, on the south side of the Walnut Street in Block 16, as the same was conveyed to the said Dillon, Trustee, by Frances McKenny (formerly Woodfork, widow of Absolom Woodfork, deceased) and Henry McKenny her husband, by deed dated Jan. 7th, 1884, and recorded in Book 33, at page 309 of the records of Douglas County, aforesaid.

6213 Also, lots 5 & 6 in Block 16, on the South side of Walnut Street, as the same was conveyed to the said Dillon, Trustee, by E. P. Hammond and wife, by deed dated Jan. 1, 1884, and recorded in Book 36 at page 59 of the records of said Douglas County, being 3.79 acres more or less.

Also, Lots 181 and 182 in Addition 2, as the same was conveyed to the said Dillon, Trustee, by Fanny M. Gilluly and husband by deed dated Jan. 7th, 1884, and recorded in Book 33 at page 311 of the records of the County of Douglas aforesaid. Also lot 180 in Addition No. 2, as conveyed to the said Dillon, Trustee, by Fanny M. Gilluly and husband by deed dated Jan. 7th, 1884, and recorded in Book 36, at page 131 of the records of said Douglas County, being 0.47 acres more or less.

The following described property standing in the names of F. Gordon Dexter, Edwin F. Atkins and Oliver W. Mink, Trustees, and situated in Leavenworth County, State of Kansas.

The undivided one half of Lot 7 in Block 1, Leavenworth City proper, as the said property was conveyed to the said Dillon, Trustee, by Humphrey Sughue, by Thomas P. Fenlon, his attorney in fact, by deed dated Feb. 2, 1883, and recorded in Book 78, at page 429 of the records of said Leavenworth County, being 0.03 acres more or less.

Also, all of Lot 16, in Block 1, in Clark & Ree's Addition to the city of Leavenworth, as conveyed to the said Dillon, Trustee, by John W. Sprattley and wife by deed dated July 25th, 1883, and recorded in Book 36, at page 251 of the records of said County of Leavenworth.

Also all of Lot 18 in Block 1 in Clark & Ree's Addition to
6214 the City of Leavenworth as conveyed to the said Dillon, Trustee, by H. T. Green and wife by deed dated July 24th, 1883, and recorded in Book 34, at page 575 of the records of said Leavenworth County.

Also, the south half of Block "F" in Clark & Ree's Addition to the City of Leavenworth, excepting and reserving therefrom the Right of Way 17½ feet wide across said half Block in a northerly and southerly direction, heretofore condemned and appropriated by the Missouri River Railroad Company for the track of its railroad, such right of way being 10 feet in width on the East, and 7½ feet in width on the west of the centre line of the track of the railroad of the Missouri River Railroad Company, as originally located and laid across said half block; and subject to all the rights of the Missouri River Railroad Company, its successors and assigns, and lessees in and to said right of way so as aforesaid acquired as the said property was conveyed to the said Dillon, Trustee, by Sylvester T. Smith and wife, by deed dated March 22, 1883, and recorded in Book 84 at page 153 of the records of Leavenworth County aforesaid, being 1.13 acres more or less.

Also including terminal lands and property more particularly and further described as follows:

The railroad, railroad right of way and easements extending from the Kansas-Missouri state line eastwardly to Liberty street in Kansas City, Missouri, and from there to Santa Fe street and to a connection with the yards of the Kansas City Union Depot Company, through Tenth Street in said city, and a track connection with the Wabash railway at a point about 300 feet east of the east line of Liberty street, extended, and from this point of connection extending
6215 east about 1,100 feet to the Wabash yards, together with a spur track to the Union Elevator, a distance of between 700 and 800 feet; the lands included in said railway property containing 13.56 acres in section 6, township 45 north, range 33 west, and bounded on the west by the said state line, on the north by the lands of the Missouri Pacific Railway Company, on the east by the centre line of Liberty Street, extended, and on the south by Twelfth street.

Also a right of way for tracks on Tenth street from the east line of the property above described to Santa Fe street, and right of way for side tracks on streets and alleys granted by city ordinance.

Also a one-third interest in lots 13, 14 and 15 in block 29, the boundaries of which are Santa Fe street on the east, Mulberry street west, Ninth street north and St. Louis avenue south.

All the lands situated in the City of Denver, County of Arapahoe, State of Colorado, title to which stands in the name of The Union Pacific Railroad Company, described as follows:

All that portion of Lot 3, that is within the Congressional Grant and all of Lots 4, 5, 6, 7, 8, 9, 10 & 11 in Block "D" in the East Division of the City of Denver	0.62 acres
All of Lots 1, 2, 3 and 4 (reserved) in Block 4 in Gaston's Addition to the City of Denver	1.41 acres

All of Lots 1, 2, 3, 4 and that part of Lot 5 in Block 5 in Gaston's Addition, described as follows: Commencing at the west corner of said lot 5, being also on the southeast line of Wewatta
6216 Street; thence southeasterly along the southwest line of said Lot 5, 97 feet; thence northeasterly at right angles to said last mentioned line 30 feet to a point; thence southeasterly at right angles to said last mentioned line 150 feet to a point; thence northeasterly at right angles to said last mentioned line 20 feet to the East corner of said lot 5; thence northwesterly at right angles to said last mentioned line and along the northeast line of said lot 5 to north corner of same; thence southwesterly along the southeast line of Wewatta Street to point of commencement ---------- 1.21 acres

All that portion of Fulton street, reserved, 40 feet in width, lying directly southeasterly of aforesaid blocks 4 and 5 and between said Blocks 4 and 5 and railroad lands; also commencing at the west corner of Lot 5 in Block 5 aforesaid, being also on the southeast line of Wewatta Street; thence southeasterly along the southwest line of said Lot 5, 247 feet to point of beginning; thence northeasterly at right angles to said last mentioned line 30 feet; thence southeasterly at right angles to said last mentioned line 19 feet to a point on the southeast line of Fulton Street, and also on the northwest line of the Right of Way of the U. P. Ry. Co.; thence southwesterly at right angles to said last mentioned line and along the said northwest line of said
6217 Right of Way of the U. P. Ry. Co. 255 feet to a point; thence northwesterly at right angles to said last mentioned line 19 feet to a point; thence northeasterly at right angles to said last mentioned line 225 feet to the place of beginning---------- 0.67 acres

All that portion of the north half of the southwest quarter of section 27, described as follows: Commencing at a point where the Northwest line of Wynkoop Street, produced, would, if so produced, intersect with the south line of the N ½ of the SW ¼ of said Sec. 27; running thence northeasterly along said line of Wynkoop Street produced to a point 990 feet west of the East line of the N ½ of the SW ¼ of said Section; thence North 0° 06' W. to a point 428.7 feet southerly from the southeast corner of Garden Addition; thence south 48° 09' W. on a line 50 feet from and parallel to incoming Denver Pacific track 30.3 feet; thence on a curve to the right, radius 1,096.3 feet parallel with and 50 feet from said track 301.5 feet; thence S 63° 45' W. 389 feet to the East line of Vanderlip property; thence south to the south line of the N ½ of the SW ¼ of said section; thence East to place of beginning---------- 2.30 acres

Also: Commencing at a point on the North Line of the S. ½ of SW ¼ of said Sec. 27, 14.1 feet East of the point where the southeast line of Wewatta Street intersects the said North line of
6218 the south boundary line of what is known as the "Vanderlip Track;" running thence east 161.45 feet to the southeast corner of said Vanderlip tract; thence North 158.9 feet to a point on a line running parallel with the south line of said Wewatta Street extended and 10 feet distant in a southeast direction from said southeast line of said Wewatta Street, so extended; thence southwesterly and parallel with the said extended line of Wewatta Street 229 feet to the place of beginning---------- 0.31 acres

Also: Beginning at a point in the East line of the Vanderlip tract 445.44 feet north of the south line of the N ½ of the SW ¼ of said Sec. 27, measured along said East line; thence S. 20° 50' W. 191.7 feet; thence southwesterly in curved line to the right with a radius of 994.1 feet, 115.2 feet; thence northeasterly parallel with the west line of Wewatta Street, produced, 164.03 feet to the said East line of Vanderlip's land; thence northerly in said east line of Vanderlip's land 167.8 feet to place of beginning----- 0.21 acres

Also: Beginning at a point in the South line of the N ½ of the SW ¼ of said Sec. 27, 57.91 feet east of the intersection with the West line of Wewatta Street; thence east 69.34 feet;
6219 thence northeasterly parallel with the centre line of said

Wewatta Street produced 231.13 feet to the east boundary line of the Vanderlip tract; thence north in said east boundary line 113.68 feet; thence southwesterly parallel with said centre line of Wewatta Street produced 164.03 feet; thence southwesterly in a curved line to the right with a radius of 973.4 feet, 136 feet to a point 64.40 feet northeasterly from the point of beginning, measured parallel with the centre line of Wewatta Street, proudced 164.03 feet; thence southwesterly in a curved line to the right with a radius of 973.4 feet, 136 feet to a point 64.40 feet northeasterly from the point of beginning measured parallel with the centre line of Wewatta Street; thence southwesterly in a straight line 64.40 feet to the point of beginning---- 0.46 acres

The southwest quarter of the northeast quarter of Sec. 23, excepting 4 acres heretofore conveyed to Mary Twining and excepting Right of Way heretofore conveyed to the D. P. Ry. & Tel. Co---- 33.65 acres

A strip of land 50 feet in width, being 25 feet on either side of the centre line of the Railroad track to the Union Stock Yards across part of the N ½ of NW ¼ of Sec. 23 and S ½ of
6220 SW ¼ of Sec. 14, extending from the Right of Way of the "Colorado Central Cut-Off" in said section 23 to the end of the centre line of said Railroad track at Station 23+50 in section 14---- 3.05 acres

Also, the following described lands in said county and State, title to which stands in the name of the Denver Pacific Railway and Telegraph Company:

A strip of land for Right of Way, 100 feet in width across the NE ¼ of the SW ¼ of Sec. 23---- 2.29 acres

A strip of land for Right of Way, 100 feet in width, across the NW ¼ of the SE ¼ of Sec. 23---- 1.97 acres

A strip of land, 50 feet wide on each side of the centre line of Railway across the SW ¼ of the NE ¼ of Sec. 23---- 2.35 acres

A strip of land 50 feet wide on each side of the centre line of railway across the east half of the northeast quarter of section 23-- 4.30 acres

A strip of land 50 feet wide on each side of the centre line of railway across the northwest quarter of the northwest quarter of section 24---- 1.50 acres

All the above in township 3 south, in range 68 west.

Also, the following described lands in said county and State, title to which stands in the name of Oliver W. Mink and James G. Harris, Trustees:

Commencing at the northwest corner of the grounds commonly called the "Fair Ground" belonging to the "Colorado Agri-
6221 cultural Society;" running thence west a distance of 830 feet; thence north one-quarter of a mile to the East and West centre line of Section 23; thence east to centre of section; thence south one-quarter of a mile to place of beginning, excepting therefrom a strip of land 100 feet wide as Right of Way for the Denver Pacific Railway and Telegraph Company---- 22.46 acres

The north half of the southeast quarter of Sec. 23, saving and excepting therefrom the Right of Way granted to the Denver Pacific Railway and Telegraph Company, 100 feet in width, and also saving and excepting a strip of land 40 feet wide off the south side of above grounds, described as follows: Commencing at a point on the south line of the north half of the southwest quarter of section 23, Town 3 south of Range 68 W. where said south line is intersected by the northwest line of Blake Street in the City of Denver; thence northeasterly on said northwesterly line of Blake Street produced, 56½ feet to a point, which is 40 feet north of said south line of north ½ of southwest ¼ Sec. 23, thence east on a line 40 feet north of and parallel with said south line of north ½ of southwest ¼ and parallel to and 40 feet north of the south line of the north ½ of the southeast ¼ of said section 3080.8 feet to the east line of said section 23; thence

6222 south on the east line of said section, 40 feet to the southeast corner or the north ½ of the southeast ¼ of said section; thence west on the south line of said north half of southe st ¼ and upon the south line of said north half of southwest ¼, 3117.3 feet to the place of beginning---------- 75.61 acres

Also the following described lands situated in said county and state, title to which stands in the name of Jay Gould and Russell Sage, Trustees:

Lots 4, 5, 6, 7 and 8 in Block 7 in Gaston's Addition to the City of Denver---------- 0.74 acres

All that portion of "Fulton Street reserved" lying directly southeast of said Lots 4, 5, 6, 7 and 8 in Block 7 and between said lots and railroad lands and connecting said railroad lands with said lots---------- 0.20 acres

Also the following lands situated in said county and state in which the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company formerly held each an undivided half interest:

All of Block numbered or marked "C" in the East Division of the City of Denver---------- 1.04 acres

Commencing at the corners of Sections 27, 28, 33 and 34, T. 3 S. R. 68 W.; thence N. 15° W. 76.3 feet to the intersection with a continuation of the northwest line of Wynkoop Street; thence northeast along a continuation of said northwest line of Wynkoop
6223 Street to its intersection with the north line of the S ½ of the SW ¼ of said Sec. 27, 1773 feet; thence e st along said north line 490 feet to the intersection of the continuation of the northwest line of Wazee Street; thence southwest along said continuation of the northwest line of Wazee Street 810 feet to its intersection with a continuation of the southwest line of 22nd Street; thence southeast along said continuation of the southwest line of 22nd Street, 205 feet to the northwest line of the alley in the rear of Blake Street; thence southwest along said line of said alley 400 feet to its intersection with a continuation of the northeast line of 21st Street; thence northwest along said continuation of the northeast line of 21st Street to its intersection with a continuation of the northwest line of Wazee Street, 205 feet; thence southwest along said continuation of the northwest line of Wazee Street to its intersection with the south line of Section 27, 672 feet; thence westerly along said line 400 feet to the place of beginning---------- 16.62 acres

Beginning at a stone monument in the centre of section 27; thence north along the north and south centre line of said Sec. 27 to a point 662.7 feet south from the northwest corner of the southwest quarter of the northeast quarter of said section; thence
6224 in a straight line northeasterly to a point in the north line of said SW ¼ of the NE ¼ of said section 27, 436.5 feet east of the northwest corner of said SW ¼ of the NE ¼ Sec. 27; thence east along the north line of said SW ¼ of the NE ¼ to the northeast corner thereof, being the point of intersection with the southeasterly line of Wynkoop Street; thence northeasterly along said southeasterly line of Wynkoop Street to its intersection with the southwest line of 35th Street; thence southeasterly along said southwest line of 35th Street to a point 280 feet northwesterly from the northwesterly line of Blake Street; said point being 338½ feet south 61° 20′ E from the corner between sections 22, 23, 26 and 27; thence N. 43° 31′ E. 106 ft; thence N 51° 16′ E. 103.3 ft.; thence N 52° 04′ E 100 ft.; thence N 50° 30′ E. 96.6 ft.; thence N 48° E. 95.2 ft.; thence N. 46° E. 97.4 feet; thence N 45° 20′ E. 1520 feet; to a point in the north line of the S ½ of the SW ¼ of said section 23; thence east along said north line of S ½ of SW ¼, 141.4 feet; thence S 45° 20′ W. 1627.5 feet;

thence S 45° 41' W. 101 ft; thence S 47° 53' W. 101.8 feet; thence S 50° 25' W. 101 ft., hence S 51° 54' W. 100.3 ft.; thence S 51° 19' W. 99 ft.; thence S 48° 26' W. 98 feet, to a point
6225 180 feet distant northwesterly from the northwesterly line of Blake Street; thence southwesterly parallel with said Blake Street to a point in the North and South centre line of section 27 aforesaid; thence north along said north and south centre line section 27 to a point 125 feet distant from said last mentioned line and being 305 feet distant northwesterly from the northwesterly line of Blake Street; thence northeasterly parallel with said Blake Street to a point in the East and West centre line of said section 27; thence west along said centre line 449.5 feet more or less to point of beginning---------- 59.49 acres

Also the following described land in said County and State, title to which stands in the names of F. Gordon Dexter, Edwin F. Atkins and Gardner M. Lane, Trustees:

Beginning at the centre of section 27; running thence southwesterly in a straight line to the point where northwesterly line of Wynkoop street, extended, intersects the north line of the SW ¼ of the SW ¼ of said section 27; thence East along the north line of said SW ¼ of SW ¼ to a point where the northwest line of Wazee Street, extended, would intersect said north line of SE ¼ of SW ¼; thence with said northwest line of Wazee Street extended, northeasterly to a point where said line of Wazee
6226 Street, extended, intersects the southeast line of the Right of Way of the Denver Pacific Railway; thence with said southeast line of said Right of Way to a point in the north and south centre line of said section 27; which is 180 feet northwesterly from the northwest line of Blake Street; thence north along said North and south centre line to a point 205 feet northwesterly from said northwesterly line of Blake Street; thence northeasterly 205 feet from and parallel with said Blake Street to a point in the East and west centre line of section 27 aforesaid; thence west along said east and west centre line section 27 to place of beginning---------- 15.46 acres

It being the true intent and purpose hereof to convey to the party of the sixth part all the railroad property embraced in said Parcel 4 as described in said decrees and therein directed to be sold, whether the same are in this Indenture particularly described or not, subject to the charges of the Receivers in respect thereof as set forth in said decrees.

To have and to hold all and singular the above mentioned and described railroad, telegraph, rolling stock, franchises and property of every kind and description embraced in said Parcel 4, and hereby conveyed, or intended to be conveyed, unto the said Union Pacific Railroad Company, party of the sixth part hereto, being the corporation organized and existing under and pursuant to the laws of the State
of Utah, and to its successors and assigns forever, as fully
6227 and absolutely as the party of the first part may, or ought, by virtue of the said decrees, to convey the same, subject to and saving the right and title of The American Loan and Trust Company, as shown by the Equipment Trust Indenture of The Union Pacific Railway Company, dated October 1st, 1887, to the extent and so far as the said Indenture affects the portion of the equipment therein embraced which is adjudged in said decrees to pertain to said mortgaged premises and to the extent of the purchase money indebtedness in said decrees found to be outstanding thereunder; and subject, also,

to the respective prior and paramount liens found and determined in and by said decrees, so far as the same are found in said decrees to affect the property hereby conveyed, and to the extent of the indebtedness specified in such decrees—that is to say:

1. A mortgage executed by the Union Pacific Railway Company, Eastern Division, to John Edgar Thomson and Henry M. Alexander, as trustees, dated August 1st, 1865, and under which mortgage Henry M. Alexander and John F. Dillon are the present trustees, known as the Eastern Division Mortgage.

2. A mortgage or lien on said railroad and appurtenances constituted by the Acts of Congress of July 1st, 1862, and July 2d, 1864, in favor of the United States of America.

3. A mortgage executed by the Union Pacific Railway Company, Eastern Division, to Carlos S. Greeley and Adolphus Meier, Trustees, dated July 1st, 1866, and known as the Income Mortgage.

4. A mortgage executed by the Kansas Pacific Railway Company to John Edgar Thomson, John A. Stewart and William Endicott, Jr., as Trustees, dated June 20th, 1869, and an Indenture supplemental thereto, dated April 9th, 1879 under which mortgage John A.
6228 Stewart and William Endicott, Jr., are the present trustees, and which is known as the Denver Extension Mortgage.

5. A mortgage executed by the Union Pacific Railway Company, Eastern Division, to John Edgar Thomson and Adolphus Meier as trustees, dated June 1st, 1866, under which mortgage John F. Dillon and John A. Stewart are the present trustees, and which is known as the Middle Division Mortgage.

6. A mortgage executed by the Union Pacific Railway Company, Eastern Division, to John Edgar Thomson and Henry M. Alexander, as trustees, dated January 1st, 1866, and under which mortgage Henry M. Alexander and John F. Dillon are the present trustees and which is known as the Leavenworth Branch Mortgage;

And subject also to the further express condition that the party hereto of the sixth part, its successors or assigns, shall, as part consideration and purchase price of the Property embraced in said Parcel 4, and herein conveyed, and in addition to the sums required by said decrees to be paid and paid therefor, take the same and receive this deed therefor upon the express condition that it or its successors or assigns shall, as provided in said decrees, pay, satisfy and discharge the obligations, liabilities and charges in said several decrees specified as follows:

First. Any unpaid compensation which has been or shall be allowed by the Court to the Receivers in said causes or their solicitors, and all unpaid indebtedness and obligations, if any such there be, which shall have been legally contracted or incurred by them in said causes in the operation or on account of the Railroad Property embraced in said Consolidated First Mortgage of the Kansas Pacific Rail-
6229 way Company at any time before the same shall be delivered to the purchaser or purchasers; and also any such unpaid compensation which has been or shall be allowed by the Court to the

Receivers or their solicitors in the cause in which Oliver Ames, Second, Samuel Carr and others are complainants, and The Union Pacific Railway Company and others are defendants, pending in said Courts and known as the "Ames Cause" and all such unpaid indebtedness, obligations and liabilities of the said Receivers in said Ames Cause which shall have been allowed or legally contracted or incurred by the said Receivers in the operation of said property embraced in said Consolidated First Mortgage and shall be properly chargeable to said property, to the extent to which the revenues and assets in the hands of said Receivers in said Ames Cause shall be insufficient to pay and discharge such compensation, indebtedness, obligations and liabilities in said cause.

Second. Any indebtedness or liability contracted or incurred by The Union Pacific Railway Company, or by the said Receivers in the said Ames Cause, in the operation of the Railroad Property, covered by and embraced in the said Consolidated First Mortgage, prior to the appointment of the Receivers in said foreclosure causes which are superior in equity to said Consolidated First Mortgage aforesaid, and payment whereof was provided for by orders of the Circuit Court of the United States for the District of Kansas, dated July 16, 1894, and February 23, 1895, in said foreclosure causes and which shall not, at the time of such delivery of possession, have been paid or satisfied out of the income of the property in the hands of the Receivers, upon the Court adjudging the same to be prior in lien to said Con-
6230 solidated First Mortgage, and directing payment thereof; provided that suit be brought for the enforcement of such indebtedness or liability incurred by said Railway Company or Receivers within the period allowed by the Statute of Limitations applicable thereto, after such indebtedness or liability was contracted or arose.

And subject, also, to all the terms, conditions and reservations of each of the said several decrees of foreclosure and sale and the several decrees confirming the said sale entered in the United States Circuit Courts for the District of Kansas, for the Western District of Missouri, and for the District of Colorado, whether in this indenture expressly referred to or not, including the reservation of the said Courts to retake and resell the premises herein conveyed in case the party of the sixth part to this indenture or its successors or assigns shall fail to pay any sum required to be paid under the said decrees within the time specified in said decrees respectively, after the entry and service of an order requiring such payment.

And this indenture further witnesseth, That whereas in and by the said decrees of foreclosure and sale of the said railroad, franchises, property and premises hereinbefore and in the said decrees described, the said Receivers and the Receivers theretofore appointed in the said Ames cause were ordered and directed to make and deliver a good and sufficient deed conveying and assigning to the purchaser or purchasers at the said Master's Sale, and his or their assigns, all their right, title and interest in, of or to any property vested or standing in

their name or to which they have acquired title as such Receivers in the management or operation of the premises covered by and
6231 embraced in said Consolidated First Mortgage so far as the same shall be appurtenant to said premises;

Now, therefore, the said Receivers as aforesaid, parties of the second part hereto, for and in consideration of the premises and of the sums as aforesaid paid by the said purchasers, and of the assignment of the said bid by the said purchasers to the party of the sixth part hereto, and in pursuance of the said decrees of the said Court respectively, have granted, bargained, sold, assigned, transferred and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey unto the said party of the sixth part—to wit, Union Pacific Railroad Company—the corporation organized as aforesaid under and pursuant to the laws of the State of Utah, all their right, title and interest in, of or to any property vested or standing in their names, or to which they have acquired title or right as such Receivers in the management and operation of the property embraced in said Parcel 4 and covered by and embraced in the said Consolidated First Mortgage so far as the same may be appurtenant to said property, and including any property and income acquired or received by the said Receivers as Receivers in the said causes through the operation of the said property embraced in said parcel 4, and any property acquired by the Receivers in the said Ames cause for or appropriated by them to the use of the railroad and telegraph covered by the said Consolidated First Mortgage, or necessary to the said railroad and telegraph line for running and operating the same, as fully and absolutely as the said Receivers may or ought by virtue of the said decrees to convey the same, subject, nevertheless, to all the debts, liabilities and obligations of the said Receivers, as specified in the said decrees. To have
6232 and to hold all and singular the said property, real and personal, unto the said party of the sixth part hereto, its successors and assigns, forever.

And this indenture further witnesseth, that the said Russell Sage and George J. Gould, parties of the third part hereto, as Trustees under the said Consolidated First Mortgage, dated May 1, 1879, described in the said decrees, in consideration of the premises and of the payment of the sum as aforesaid by the said purchasers at said Master's sale for the said properties embraced in said Parcel 4, and of the assignment of the said bid by the said purchasers to the party of the sixth part hereto, and in pursuance of the said decrees and orders of the said Courts, respectively, have transferred and released, and by these presents do transfer and release to the said Union Pacific Railroad Company, party of the sixth part hereto, its successors and assigns forever, all the right, title and interest of the said parties of the third part hereto in and to all the property embraced in said Parcel 4 as defined in said decrees and covered by the said Consolidated First Mortgage, or upon which the said Consolidated First Mortgage is a lien, as fully and absolutely as they may or ought by

virtue of the said decrees to transfer and release the same. To have and to hold all and singular the said property unto the said party of the sixth part hereto, its successors and assigns forever.

And this indenture further witnesseth, that said The Union Pacific Railway Company, party hereto of the fourth part, for and in consideration of the premises and in pursuance of the said decrees and orders of the said Courts respectively, has bargained, sold, assigned, transferred, conveyed and released, and by these presents does
6233 bargain, sell, assign, transfer, convey and release unto the party hereto of the sixth part, all the right, title and interest of The Union Pacific Railway Company, party hereto of the fourth part, in and to the said railroad, rights, properties, functions, franchises, privileges, immunities, money and credits, embraced in Parcel 4 as described in said decree and therein ordered to be sold, and all the property described in said Parcel 4 in the said decrees and therein ordered to be sold and herein conveyed by the parties of the first, second and third parts respectively to this Indenture, as fully and absolutely as the said party of the fourth part hereto can, or ought by virtue of the said decrees to convey the same. To have and to hold all and singular the said railroad premises and property, real and personal, embraced in said Parcel 4, unto the said party of the sixth part hereto, its successors and assigns forever.

And this indenture further witnesseth, that the said Alvin W. Krech and Lawrence Greer, being the purchasers at the said sale of the said railroad, property and premises embraced in said Parcel 4 and herein conveyed by the said Special Master under the said decrees of foreclosure, having assigned, transferred and set over, as hereinbefore recited, unto the party of the sixth part their said bid and their right to receive conveyance of the property embraced in said Parcel 4 so purchased, and all their other rights under the said decrees with respect to said property embraced in said Parcel 4, or by virtue of their said bid for and purchase thereof, do hereby join in the execution of this Indenture for the purpose of releasing and confirming and they do hereby release and confirm unto the said Union Pacific Railroad Company, party hereto of the sixth part, and its
6234 successors and assigns forever all of their right, title and interest in and to the property and premises embraced in said Parcel 4 and in this Indenture conveyed and each and every part thereof.

It is understood that no personal covenant or liability shall be implied against the parties of the first, second, third and fifth parts, or any of them, by reason of the execution of this deed.

In order to facilitate the recording hereof, twenty-one originals of this Indenture have been executed, acknowledged and delivered by the respective parties, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered, shall be deemed an original, and all collectively but one instrument.

In witness whereof, the said parties hereto of the first, second, third and fifth parts, have hereunto set their hands and seals, and the parties of the fourth and sixth parts have caused these presents to be signed by their respective officers, duly authorized, and their respective corporate seals to be hereto affixed, and attested by their respective secretaries the day and year first above written.

WILLIAM D. CORNISH, (SEAL) Special Master.

S. H. H. CLARK, (SEAL)
OLIVER W. MINK, (SEAL)
E. ELLERY ANDERSON, (SEAL) } As Receivers.
FREDERIC R. COUDERT, (SEAL)
JOHN W. DOANE, (SEAL)

RUSSELL SAGE, (SEAL)
GEORGE J. GOULD, (SEAL) } As Trustees.

6235

ALVIN W. KRECH, (SEAL)
LAWRENCE GREER, (SEAL) } As Purchasers.

THE UNION PACIFIC RAILWAY COMPANY,
By S. H. H. CLARK, *President.*

Attest:
(SEAL) ALEX. MILLAR,
Secretary.

UNION PACIFIC RAILROAD COMPANY,
By HORACE G. BURT, *President.*

Attest:
(SEAL) ALEX. MILLAR,
Secretary.

Signed, sealed and delivered by William D. Cornish, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, Russell Sage, George J. Gould, Alvin W. Krech and Lawrence Greer in the presence of — L. F. Timmerman. Edward Van Ingen.

By Silas H. H. Clark in the presence of — T. M. Orr. James P. Earl.

By S. H. H. Clark, President, on behalf of The Union Pacific Railway Company, in the presence of — T. M. Orr. James P. Earl.

By Alexander Millar, Secretary, on behalf of The Union Pacific Railway Company, in the presence of — L. F. Timmerman. Edward Van Ingen.

By Horace G. Burt, President, and Alexander Millar, Secretary, on behalf of Union Pacific Railroad Company, in the presence of — L. F. Timmerman. Edward Van Ingen.

6236 Mr. LOVETT. It is stipulated that on the 19th day of November, 1894, Russell Sage and George J. Gould, as trustees of the Denver Pacific Railway and Telegraph Company's First Mortgage, filed their bill of complaint (in the form customary in such cases in the Circuit Courts of the United States) for the foreclosure of said mortgage in the Circuit Court of the United States for the District of Colorado.

I now offer in evidence Defendants' Exhibit 31, being copy of the decree of foreclosure rendered in the suit just mentioned.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 31 is as follows:

DEFENDANTS' EXHIBIT 31.

At a Circuit Court of the United States, held in and for the District of Colorado, in the City of Denver, on the 31st day of July, 1897.

Present Hon. Walter H. Sanborn, Circuit Judge.

RUSSELL SAGE AND GEORGE J. GOULD, TRUSTEES, Complainants, *vs.* THE UNION PACIFIC RAILWAY COMPANY, THE MERCANTILE TRUST COMPANY, S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT and JOHN W. DOANE, Defendants.	Foreclosure Decree. No. 3170. Denver Pacific First Mortgage.

6237 DECREE.

This cause came on to be heard at this term upon the pleadings and proofs therein and upon all the papers on file, together with the report of William D. Cornish, Special Master, to whom the same was referred by an order dated the 5th day of April, A. D. 1897, which said report was filed in this cause on the 31st day of July, A. D. 1897, and upon all proceedings had in this cause, and was argued by counsel, and, upon consideration, it was, on motion of Winslow S. Pierce and Rossington, Smith & Dallas, solicitors for complainants Russell Sage and George J. Gould, trustees, said The Union Pacific Railway Company appearing by W. R. Kelly, its solicitor, and the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson and Frederic R. Coudert and John W. Doane appearing by W. R. Kelly, their solicitor, and The Mercantile Trust Company appearing by Alexander & Green and Gleed, Ware & Gleed, its solicitors;

Ordered, adjudged and decreed, and the Court doth find, as follows:

I. *Report confirmed.*—That the report of William D. Cornish, to whom this cause was referred, by order therein dated on the 5th day of April, 1897, which said report was filed in this cause on the 31st day of July, 1897, be, and the same is hereby, in all respects, except as herein expressly otherwise determined, approved and confirmed.

II. *General finding.*—That all the material allegations of the bill of complaint herein are true.

III. *Formation of the Union Pacific Ry. Co.*—That the defendant The Union Pacific Railway Company is a corporation created by and existing under and by virtue of the Acts of the Congress of
6238 the United States of July 1st, 1862, and of July 2d, 1864, and the other acts of the Congress of the United States amendatory thereof and supplemental thereto; that said The Union Pacific Railway Company was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several acts of the Congress of the United States, by the consolidation of The Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, and said The Union Pacific Railway Company so created thereupon became the successor of each and all of the said constituent companies and thereby became vested with all the rights, titles, interests, lands and land grants, properties and franchises of each and all of the said constituent companies; and said The Union Pacific Railway Company is the owner of the said railroad, property and franchises embraced in the First Mortgage of the Denver Pacific Railway and Telegraph Company, dated August 10th, 1869, under which the complainants Russell Sage and George J. Gould are Trustees, and which is hereinafter more fully referred to; and said The Union Pacific Railway Company in addition thereto is the owner of the further lines of railway and property, owned and operated prior to said consolidation by said The Union Pacific Railroad Company, extending from a point fixed by the President of the United States by Executive order dated November 17, 1863, and March 7, 1864, as the Eastern terminus of said railroad on the Iowa bank of the Missouri River, across said river and through the States of Nebraska, Colorado and Wyoming into the State of Utah to a connection with the railroad of the Central Pacific Railroad Company at a
6239 point about five miles west of the City of Ogden, in the State of Utah, including the bridge over the Missouri River between Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska; and said The Union Pacific Railway Company is the owner of the further line of railroad and property, owned and operated prior to said consolidation by the said Kansas Pacific Railway Company, extending from the City of Kansas City, in the State of Missouri, to the City of Denver, in the State of Colorado.

IV. *Formation of the Kansas Pacific Ry. Co.*—That the Kansas Pacific Railway Company, hereinbefore referred to as one of the constituent companies of the consolidated The Union Pacific Railway Company, one of the defendants herein, was, in the year 1855, created, under the name of the "Leavenworth, Pawnee and Western Railroad Company," by act of the Governor and legislative Assembly of the Territory of Kansas, and was aided and endowed with franchises by and through Congressional legislation; that the name of said company was, in the year 1863, duly and pursuant to lawful authority

changed from the "Leavenworth, Pawnee and Western Railroad Company" to "Union Pacific Railway Company, Eastern Division," and the name of said company was, in the year 1869, under and by virtue of an Act of the Congress of the United States, approved March 3d of that year, changed to that of the "Kansas Pacific Railway Company."

V. *Formation of Denver Pacific Ry. & Tel. Co.*—That the Denver Pacific Railway and Telegraph Company, one of the constituent companies of the consolidated The Union Pacific Railway Company, herein, was, on or about the 18th day of November, 1867, duly created and incorporated under the laws of the territory of Colorado, and was aided and endowed with franchises by and
6240 through Congressional legislation, and was by its Charter authorized to construct a line of railroad and telegraph from the City of Denver, in Arapahoe County, Colorado Territory, through and within the said Territory in a northerly direction to the northern boundary line of said territory in the direction of the most practicable point of connection with the Union Pacific Railroad; and it was in said charter further declared that the northern terminus of said railroad should be the most practicable point of connection with the said Union Pacific Railroad, and the southerly terminus thereof should be Denver City, while the route of said road should be from Denver aforesaid, down the valley of the Platte River, along the most practicable course for construction to said point of connection with the Union Pacific Railroad.

VI. *Property acquired.*—That the Kansas Pacific Railway Company, under its various names and in pursuance of its territorial charter and of Congressional legislation, was authorized to construct and operate a line of railroad from the west bank of the Missouri River, in the town of Leavenworth, in the State (then territory) of Kansas, to the town of Pawnee, or to some point feasible and near to the Government Reservation of Fort Riley, with the privilege of extending the same to the western boundary of the territory of Kansas, and to construct a railroad and telegraph line from the Missouri River, at the mouth of the Kansas River, on the south side thereof, so as to connect with the Pacific Railroad of Missouri, to a point on the 100th meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River in the State
(then territory) of Nebraska, at a point to be fixed by the
6241 President of the United States after actual surveys; and by an Act of Congress, approved July 3d, 1866, the said Kansas Pacific Railway Company was authorized to designate the general route of its road and to file a map thereof, provided that said company should connect its said line of railroad and telegraph with the Union Pacific Railroad, but not at a point more than fifty miles westwardly from the meridian of Denver in Colorado, and by act approved March 3d, 1869, said Kansas Pacific Railway Company was authorized to contract with the Denver Pacific Railway and Tele-

graph Company, a corporation then existing under the laws of the territory of Colorado, for the construction, operation and maintenance of that part of its line of railroad and telegraph between Denver City and its point of connection with the Union Pacific Railroad Company, which point was, in and by said last-mentioned act, fixed at Cheyenne, in the State (then territory) of Wyoming; and to adopt the road-bed then already graded by said Denver Pacific Railway and Telegraph Company as said line, and to grant to said Denver Pacific Railway and Telegraph Company the perpetual use of its right of way and depot grounds, and to transfer to it all the rights and privilege, subject to the obligations pertaining to such part of its line. And, by said last-mentioned act, the said Kansas Pacific Railway Company was required to extend its railroad and telegraph to a connection at the City of Denver, so as to form, with that part of its line in said act authorized to be constructed, operated and maintained by the Denver Pacific Railway and Telegraph line, a continuous line of railroad and telegraph from Kansas City, by way of Denver, to Cheyenne. And that, in pursuance of the authority and provision of said last-mentioned act, the said Kansas Pacific
6242 Railway Company (then known as the Union Pacific Railway Company, Eastern Division), by agreement bearing date March 19, 1869, did contract with the Denver Pacific Railway and Telegraph Company as in the manner and to the extent in said act contemplated and authorized, and did grant to the said Denver Pacific Railway and Telegraph Company the use of its right of way and depot grounds, and did transfer to it all the rights and privileges in said act mentioned.

VII. *Land grant.*—That in and by said Act of Congress of March 3d, 1869, extending to said Denver Pacific Railway and Telegraph Company certain provisions of said Acts of Congress of July 1st, 1862, and July 2d, 1864, there were granted to said Denver Pacific Railway and Telegraph Company, for the purpose of aiding in the construction of its railroad, and for other purposes, in said Act of July 1st, 1862, defined, every alternate section of public land (except mineral lands, excluding coal and iron lands from the description of mineral lands), designated by odd numbers, to the amount of ten alternate sections per mile on each side of said railroad on the line thereof, and within the limits of twenty miles on each side of the said road, not then sold, reserved or otherwise disposed of by the United States, and to which a preemption or homestead claim might not have attached at the time the line of said road should be definitely fixed; and in and by said Act of March 3d, 1869, it was enacted and provided that the said Denver Pacific Railway and Telegraph Company should receive patents to such alternate sections of land along its line of road as therein defined.

VIII. *Construction of road.*—That on and prior to the 10th
6243 day of August, 1869, the said Denver Pacific Railway and Telegraph Company was engaged in the construction, and subsequently completed the construction and equipment, of a line of

railroad and telegraph from Denver City, Colorado to Cheyenne, in the State (then Territory) of Wyoming, together with the appurtenances thereof, being a distance of 106 miles, or thereabouts, and said company was entitled to receive from the United States every alternate section of public lands designated by odd numbers to the amount of ten alternate sections per mile on each side of its said railroad on the line thereof and within the limits of twenty miles on each side of said road, excepting lands sold, reserved or otherwise disposed of by the United States, or to which a pre-emption or homestead claim might have attached at the time the line of said road should be definitely located, and excepting, also, mineral lands other than coal and iron lands.

IX. *Issue of first mortgage bonds.—Execution of first mortgage.*— That the Denver Pacific Railway and Telegraph Company, pursuant to and in accordance with the powers conferred upon it by law, and pursuant to due corporation action, and in order to provide the necessary funds for the construction, completion and equipment of its said line of road from Denver City to Cheyenne, did duly make, execute and issue under its corporate seal, and did deliver to various persons, firms and corporations, for value and for the considerations, purposes and in the manner provided by its first mortgage, its bonds to the number of 2,500 in the aggregate amount of $2,500,000, each of which bonds was dated on the 10th day of August, 1869, and in each

of which the said Denver Pacific Railway and Telegraph
6244 Company promised to pay M. K. Jessup & Company, or bearer, on the first day of May, 1899, in the City of New York, one thousand dollars in United States gold coin, of or equal to the then present standard, with interest thereon at seven per centum per annum, free of United States taxes, semiannually on the first days of November and May, in like gold coin, upon presentation and surrender of the coupons annexed to said bonds, such interest to be paid either in New York, London or Frankfort, at the option of the holders, as specified in the coupons attached to said bonds.

That of said bonds so issued by the Denver Pacific Railway and Telegraph Company there have been surrendered and cancelled as and in the manner contemplated by the provisions of said mortgage all of said bonds except the amount of $975,000, and that bonds amounting to the principal sum of $975,000, together with coupons thereto attached and other coupons representing unpaid interest on bonds secured by said mortgage now remain outstanding and unpaid.

That pursuant to and in accordance with the powers conferred upon it by law, and pursuant to due corporate action, and for the purpose of securing the due and punctual payment of the principal and interest of said first mortgage bonds then issued and to be issued, and for other lawful considerations, the said Denver Pacific Railway and Telegraph Company did duly make and execute under its corporate seal, and did deliver to John Edgar Thomson, Adolphus Meier and John Evans, trustees, a mortgage or deed of trust dated the 10th day of August, 1869, wherein and whereby the said Denver

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Pacific Railway and Telegraph Company did grant, bargain, sell,
assign, set over, release, convey and confirm unto the said
6245 John Edgar Thomson, Adolphus Meier and John Evans, as
trustees, and to their successors, heirs and assigns forever, all the lands, land grant, railroad, property and franchises in said mortgage described, as follows, viz.:

"All the right, title, interest, claim or demand whatsoever, which the party of the first part now has or is entitled to, or which it shall or may at any time hereafter acquire or become entitled to, of, in or to all those lands or sections of land, and each and every part of them, granted or to be granted, under or by virtue of the said Acts of Congress of the United States of America, in aid of, or for or by reason or in respect of, the construction of the above-mentioned line of Railway from Denver, in the Territory of Colorado, to the junction of the Union Pacific Railroad in Cheyenne, in the Territory of Wyoming, being a distance of one hundred and six miles or thereabouts, being twenty sections of land for each and every mile of said railway, up to and including the full quantity of eight hundred thousand acres of such lands, to be completely vested in the said trustees or their successors, as hereinafter mentioned, including, and to include in, and covering by this mortgage, conveyance or deed of trust, all and every part of the said lands within twenty miles on each side of said Railway, for the whole distance of one hundred and six miles, or thereabouts, between Denver and the junction at Cheyenne, as aforesaid, granted or to be granted, under or in virtue of the said Act of Congress, for or by reason, or in respect to the construction of the said line of railroad between said points, until after making the exceptions provided for by law, of lands sold, reserved, or other-
6246 wise disposed of by the United States, or to which a preemption or homestead claim may have attached, and of mineral lands, other than coal or iron lands, there shall have been actually patented or granted to the said parties of the second part, or their successors as Trustees, hereunder, the full and clear quantity of eight hundred thousand acres of such lands exclusive of the Roadway and appurtenances and of sites for depots and buildings, so as to vest such eight hundred thousand acres in said trustees by a clear and perfect title; and also all and singular the Railroads and Telegraph line or lines of the said party of the first part, constructed or now being or to be constructed upon or over the line or route hereinbefore mentioned, viz.: From Denver City, in the Territory of Colorado, to the junction with the Union Pacific Railroad at Cheyenne, in the Territory of Wyoming, a distance of one hundred and six miles, or thereabouts; and also all the lands, tenements and hereditaments acquired or appropriated, or which may hereafter be acquired or appropriated, for the purpose of a right of way for said Railway, and all the easements or appurtenances thereunto belonging, or in anywise appertaining, and all railways, ways and rights of way, depot grounds, tracks, bridges, viaducts, culverts, fences and other structures, depots, station houses, engine houses, car houses, freight

houses, wood houses, warehouses, machine shops, work shops, superstructures, erections and fixtures, whether now held or hereafter at any time acquired for the use of said railway, or in connection therewith, or the business thereof; also all locomotives, tenders, cars, and other rolling stock or equipments, and all rails, ties, chairs and machinery, tools, implements, fuel and materials whatsoever, for or in respect of the constructing, operating, repairing or
6247 replacing said railway, or any part thereof, or convenient or necessary for use for the purposes thereof; whether now held or owned, or hereafter to be acquired, by said party of the first part, together with all the equipments and appurtenances whatsoever thereunto belonging, whether now held or hereafter acquired, and all franchises connected with or relating to said railway and said line of telegraph, or the construction, maintenance or use thereof, now held or hereafter acquired by the party of the first part, and all corporate franchises of any nature relating thereto, including the franchise to be a corporation and operate said railway, which are now or may hereafter be possessed or exercised by the party of the first part, together with all and singular the endowments, income and advantages, tenements, hereditaments and appurtenances to the abovementioned lands, railroad premises or property belonging, or in otherwise appertaining, and the reversion and reversions, remainder and remainders, tolls, incomes, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, present or prospective of the said party of the first part, of, in and to the same and every part and parcel thereof, with the appurtenances."

X. *Trustees.—Recording of mortgage: Lien defined.*—That the said John Edgar Thomson, Adolphus Meier and John Evans duly accepted said mortgage or deed of trust and the trusts thereunder. That, subsequently, the said John Edgar Thomson died. That, on or about the 25th day of October, 1877, the said Adolphus Meier was duly, and in accordance with the provisions of said mortgage, removed from his office as trustee under said mortgage. That,
6248 subsequently and on or about the 10th day of September, 1879, the said John Evans resigned his office as trustee under said mortgage. That, upon the death of said John Edgar Thomson, Anthony G. Dulman was, in or about the month of April, 1877, duly appointed trustee in the place and stead of said Thomson, deceased, and the said Dulman afterwards—to wit, on the 10th day of September, 1879—duly resigned his office as such trustee. That, on or about the 10th day of September, 1879, Jay Gould and Russell Sage, of the City of New York, were duly appointed trustees in the place and stead of said Evans and Dulman. That, on December 2d, 1892, the said Jay Gould died, and, thereafter and on the 20th day of February, 1893, George J. Gould, one of the complainants herein, was duly, and in conformity with the provisions of said mortgage in that behalf, appointed trustee under said mortgage in the place and stead of the said Jay Gould, deceased; that the said George J. Gould ac-

cepted such appointment as such trustee, and has been continuously since the 20th day of February, 1893, and is now one of the trustees of said mortgage. That each of the said trustees original and successor duly accepted said mortgage and the trust thereunder, and the said Russell Sage and George J. Gould are now the trustees under said mortgage and as such trustees have of right and as thereto duly authorized, instituted and maintained the cause herein in which they are complainants, for the relief sought and herein decreed.

That the said mortgage so executed by the said Denver Pacific Railway and Telegraph Company was duly recorded in all places where the same was required by law to be recorded, and said mortgage and the bonds issued thereunder became and were and are
6249 a lien upon all the railroads, lands, land grants and property mentioned and described in said mortgage or deed of trust.

That the said mortgage of the Denver Pacific Railway and Telegraph Company, dated the 10th day of August, 1869, is a valid and subsisting first and paramount lien upon all the right, title, interest, claim or demand whatsoever which the said Denver Pacific Railway and Telegraph Company had or was entitled to or which it should or might at any time thereafter acquire or become entitled to, or which its successor The Union Pacific Railway Company now has or is entitled to, or may hereafter acquire or become entitled to, of, in or to all those lands or sections of land and each and every part of them granted or to be granted under and by virtue of the various Acts of Congress of the United States of America in aid of or for, or by reason or in respect of the construction of the line of railway from Denver in the State, then Territory, of Colorado, to the junction of the Union Pacific Railroad in Cheyenne in the State, then Territory, of Wyoming, being a distance of about 106 miles, being twenty sections of land on each and every mile of said railway up to and including the full extent of 800,000 acres of such lands, which have not been duly conveyed by the said Denver Pacific Railway and Telegraph Company or its successor The Union Pacific Railway Company, or conveyed by said trustees under the power reserved in said mortgage, and is also a first and paramount lien upon all the lands to which the said Denver Pacific Railway and Telegraph Company, or its successor The Union Pacific Railway Company, was or is entitled, under said acts of Congress, to receive from the United States and which lands have not been certified or patented to said railway
6250 companies or either of them under said acts of Congress; a more full description of which lands is shown by the schedule giving the list of such lands, with the Government description thereof, which list is embraced in the said Master's report herein, and is there designated as Schedule 2. And said mortgage is also a first and paramount lien upon all the land contracts and bills receivable and proceeds arising from the same, now outstanding and existing for or with respect to the disposal of any of said lands either by said Denver Pacific Railway and Telegraph Company or its successor, The Union Pacific Railway Company or by said trustees.

XI. *Lien and priorities defined.*—And said mortgage of the Denver and Pacific Railway and Telegraph Company is a valid and subsisting first and paramount lien upon all and singular the railroad and telegraph line of the said Denver Pacific Railway and Telegraph Company or its successor, The Union Pacific Railway Company, from Denver in the State of Colorado to the junction with the Union Division of the Union Pacific Railway Company at Cheyenne in the State of Wyoming, and also all the lands, tenements and hereditaments then acquired or appropriated, or which were thereafter acquired or appropriated either by the Denver Pacific Railway and Telegraph Company or its successor, The Union Pacific Railway Company, for the purpose of right of way of said railway, and all the easements and appurtenances thereunto belonging or in anywise appertaining, and all the railways, ways and rights of way, depot grounds, tracks, bridges, viaducts, culverts, fences and other structures, depots, station houses, engine houses, car houses, freight houses, woodhouses, warehouses, machine shops, workshops, super-
6251 structures, erections and fixtures, whether held at the date of the execution of said mortgage or thereafter acquired by either the Denver Pacific Railway and Telegraph Company or its successor The Union Pacific Railway Company or the Receivers of the said Union Pacific Railway Company, for the use of said railway or in connection therewith, or of the business thereof, and all the lands, terminals, terminal property and facilities and also buildings or other things incident or appurtenant to said railways, terminals and terminal property, situated and being in the city of Denver, in the State of Colorado, or elsewhere, which the said Denver Pacific Railway and Telegraph Company owned at the date of the execution of said mortgage or which it or its successors The Union Pacific Railway Company or said Receivers have since purchased or acquired for the operation and maintenance of said railway, or for use in connection with, or for the purposes of said railway or any part thereof, or for the business of the said Union Pacific Railway Company and also upon all and singular the franchises, originally or subsequently owned, possessed or acquired by the Denver Pacific Railway and Telegraph Company or by its successor The Union Pacific Railway Company for the purpose of maintaining and operating said railway between said points and to be a corporation and upon all the title and interest of the said Denver Pacific Railway and Telegraph Company and its successor The Union Pacific Railway Company and its Receivers in said premises and upon all the locomotives, tenders, cars and other rolling stock or equipment, including Pullman Sleeping Cars, and all rails, ties, chairs and machinery, tools and implements, fuel and materials whatsoever for or in respect of the construction, operation and repairing
6252 or replacing the said railway or any part thereof, or convenient or necessary for the purposes thereof which the said Denver Pacific Railway and Telegraph Company owned at the date of the said mortgage or which it, or its successor The Union Pacific Railway

Company, or the Receivers thereof, have since purchased or acquired; together with all and singular the tenements, incomes and advantages, easements, hereditaments and appurtenances to the above lands, railroad, premises or property belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, income, rents, issues and profits, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, present or prospective, of the said Denver Pacific Railway and Telegraph Company and its successor The Union Pacific Railway Company, of, in, and to the same, and every part and parcel thereof, and upon all the locomotives, cars, carriages and rolling stock of every description acquired by the Denver Pacific Railway and Telegraph Company. The Union Pacific Railway Company and its Receivers, for use upon or in connection with the operation of said mortgaged premises necessary to the running and operating the same, being an undivided five per centum of all the locomotives, cars, carriages, rolling stock and equipment now owned or used by the Union Pacific Railway Company, including to the extent of five per centum thereof the interest of the Union Pacific Railway Company and its Receivers in all of the locomotives, cars, carriages and equipment embraced and included in the equipment trust indenture of the Union Pacific Railway Company to the American Loan and Trust Company, of Boston, trustee, dated October 1st, 1887, and securing respectively bonds designated Series A bonds to the extent of
6253 $72,000 thereof now outstanding; Series B bonds to the extent of $210,000 thereof now outstanding; and Series C bonds to the extent of $225,000 thereof now outstanding; also upon all furniture, fixtures, appliances, apparatus, supplies and material in the various offices of said Railway Company upon or remote from said line of Railway, including the principal offices of said Company at Omaha and Boston, owned, acquired, or provided for use in connection with said mortgaged property; also upon the rights and property of the character as above described owned or provided for the common use of the several divisions of said railway Company's property, to the extent of the proportionate use and devotion thereof to the business and concerns of the said mortgaged property; also upon the rights and interest of said The Union Pacific Railway Company in or to property of every kind and nature, whether of the character as hereinbefore described or otherwise, owned, acquired or provided for the use of said mortgaged property; also upon the corporate rights and franchises of said The Union Pacific Railway Company, so far as they pertain to said mortgaged property, and also upon the money, credits and property not herein otherwise specified, in the possession of the Receivers herein, or to which they are or may be entitled which have been or may be derived by said Receivers from or on account of the property of the Union Pacific Railway Company pertaining to the said mortgaged property, or from the sale or other disposition of any of said property or from the use of the same, or from the

operation thereof by said Receivers subject to the charges of said Receivers in respect thereto.

The lien of said mortgage is subject to the right and title
6254 of the American Loan and Trust Company, trustee of the equipment trust indenture of The Union Pacific Railway Company, dated October 1st, 1887, to the extent and so far as the said indenture affects the portion of the equipment therein embraced which is herein decreed to pertain to the mortgaged premises covered by said mortgage, and to the extent of the purchase money indebtedness found to be outstanding under said equipment trust indenture.

XII. *Money held by trustees.*—That the complainants as such trustees have in their possession the sum of $120,367.86 in cash, said money being the undisbursed balance of proceeds of land sales and receipts from sources provided in said mortgage, upon which sum said mortgage is a valid and subsisting first and paramount lien.

XIII. *After-acquired property.*—That since the execution of said mortgage of the Denver Pacific Railway and Telegraph Company, it and its successor The Union Pacific Railway Company have acquired, for the operation and maintenance of said railway in the City of Denver, in the State of Colorado, certain other lands, rights of way, depots, stations, buildings and other things incident and appurtenant to the operation of said railway, on all of which property so acquired the said mortgage is a valid and subsisting lien.

XIV. *Defaults and amount due under first mortgage.*—That the Denver Pacific Railway and Telegraph Company and its successor The Union Pacific Railway Company have made default in the payment of all the interest and interest coupons which have matured on and since the first day of May, 1878, upon all of the outstanding bonds secured by said mortgage; and the said Denver Pacific
6255 Railway and Telegraph Company and its successor The Union Pacific Railway Company have made default in the payment of all of the coupons and interest which accrued upon 1,000 of said bonds, heretofore outstanding and now retired and cancelled, from the first day of May, 1878, to the first day of November, 1892, and that the payment of all the said interest so defaulted has been demanded, but the same remains due and unpaid, and the following sums are now due and payable at the date of this decree for said coupons and interest on the same, viz.:

For coupons	$2,345,875.00
For interest thereon	1,262,872.18
Total amount due	3,608,747.18

That at the date of the filing of the bill by the complainants herein the moneys in the hands of said complainants, as trustees, were insufficient to enable them to pay the interest coupons then due and unpaid on said bonds, and at no time since have said trustees had sufficient funds in their hands, as such trustees, derived in any way from the said trust and resources in said mortgage provided, to enable them to pay the interest so as aforesaid defaulted.

XV. *Property acquired by the Union Pacific Ry. Co.*—That the defendant, The Union Pacific Railway Company, at the time it took the assignment, transfer, sale and conveyance from the said Denver Pacific Railway and Telegraph Company of the railway and property of the said Denver Pacific Railway and Telegraph Company, took the same subject to all the liens, charges and equities pertaining thereto, and now holds the title subject to the lien created by
6256 the said First Mortgage of the Denver Pacific Railway and Telegraph Company.

XVI. *Kansas Division and Collateral Mortgage Bonds.*—That the defendant, The Union Pacific Railway Company, on or about the 1st day of May, 1891, executed its certain other mortgage or deed of trust and known as Kansas Division and Collateral Mortgage, by which it conveyed to the Mercantile Trust Company of New York, as Trustee, among other property, the property mentioned and described in the mortgage executed by the Denver Pacific Railway and Telegraph Company, known as the said First Mortgage, that the said Kansas Division and Collateral Mortgage, so executed to the said defendant, the Mercantile Trust Company, was made and is subject to the said First Mortgage of the Denver Pacific Railway and Telegraph Company.

That the said defendant, The Union Pacific Railway Company, under and in accordance with the provisions of said Kansas Division and Collateral Mortgage, issued five million dollars ($5,000,000) of its bonds, in and by each of which said bonds the said The Union Pacific Railway Company promised to pay to bearer on the 1st day of May, 1921, the sum of one thousand dollars ($1,000), with interest thereon in the meantime at the rate of five per cent. per annum, payable semi-annually on the first days of May and November of each year. That upon said bonds being issued as aforesaid the said Mercantile Trust Company certified the same as provided in said trust deed, and all of said bonds, amounting in the aggregate to five million dollars, are now outstanding, and are a subordinate and inferior lien to that of the First Mortgage bonds upon the property described in said First Mortgage, and is subject to the lien created by said First Mortgage.

6257 XVII. *Railway Co. insolvent.—Property indivisible.*—That in addition to the sums hereinbefore found to be due upon the mortgage executed by the said Denver Pacific Railway and Telegraph Company, the said defendant The Union Pacific Railway Company is indebted in large sums of which the payment is overdue; and it has made default in the payment thereof and is unable to pay the same, and is wholly insolvent; and it is for the best interest of all concerned that all the said railroad, properties and franchises as hereinbefore described, should be sold, and that the proceeds thereof be applied to the payment of said indebtedness and bonds in due order and priority. That the railroad, rolling stock, equipment and franchises of The Union Pacific Railway Company embraced in said mortgage are indivisible and are so situated that the same cannot be sold in parcels

without great injury to all the parties in interest, and that it is expedient that the same shall be sold as an entirety, as hereinafter provided.

XVIII. *Payment decreed.*—It is further ordered, adjudged and decreed, that the defendant, The Union Pacific Railway Company, pay or cause to be paid within twenty days after the entry of this decree to the complainants, Russell Sage and George J. Gould, Trustees, for the use and benefit of the holders of interest coupons issued under and secured by the First Mortgage of the Denver Pacific Railway and Telegraph Company, the amount hereinbefore found to be due and interest thereon, less the amount of $120,367.86 so as aforesaid found to be in the hands of said Trustees and applicable for the payment of interest upon said bonds; namely, the sum of $3,488,-
379.32 with interest thereon from the date of this decree to the
6258 date of said payment at the rate of six per cent. per annum.

Upon the payment of the said sum of $3,488,379.32 with interest thereon, to the complainants as such Trustees, said sum, together with the money now in the possession of said Trustees, shall be distributed among the respective holders of said interest coupons in payment of the sums so found to be due and decreed to be paid.

In case the said amounts shall be paid or caused to be paid by said The Union Pacific Railway Company, or by any defendant to this cause, as herein decreed, then any of the parties to this suit may apply to this Court for such further relief and for such further orders and directions as may be just and equitable.

XIX. *Foreclosure and sale ordered.*—It is further ordered, adjudged and decreed, that in default of such payment by the defendant the said The Union Pacific Railway Company, or by some one claiming under it or by some one for its account, or by some of the defendants herein, within the time directed, as aforesaid, all the railroad, telegraph, franchises, rolling stock, lands, land grants and property of every kind and description embraced and covered by the said first mortgage of the Denver Pacific Railway and Telegraph Company, together with all property of whatsoever kind and character, real or personal, that has since been acquired by The Union Pacific Railway Company or its Receivers, for use in the operation of said railroad as hereinbefore found, and all the property of whatever kind or character held by the complainants as Trustees, as hereinbefore found, shall be sold as hereinafter directed, subject, however, to the right and title
of the American Loan and Trust Company in certain equip-
6259 ment as set forth in Article XI. of this decree; and all the right, title, estate, interest and equity of redemption of said defendant The Union Pacific Railway Company and of the said Mercantile Trust Company, and of all persons claiming or to claim under either of said named defendants, since the date of said first mortgage, and of the said Russell Sage and George J. Gould, trustees, complainants herein, and of each and every defendant in this cause, of, in or to the said railroad, telegraph, franchises, rolling stock and property and every part and parcel thereof, and of all the right, title,

estate, interest and equity of redemption of all and each of the parties to this cause, of, in or to the said property of every kind and character and of every part and parcel thereof, shall be forever absolutely barred and foreclosed.

XX. *Manner and terms of sale.*—Said railroad, telegraph, franchises, rolling stock, lands, land grants and all property covered by and embraced in said first mortgage, and all the lands and all the property in the hands of said complainants as trustees under said first mortgage and held by them subject to the lien created by said mortgage, shall be sold upon the conditions and in the manner hereinafter provided and directed, at public auction, to the highest bidder or bidders, at the front door of the Court House of the County of Arapahoe, in the City of Denver, in the State of Colorado, on a day or days to be fixed by the Special Master hereinafter appointed; and public notice of such sale and the time and place thereof, together with the manner and the terms upon which the said sale is to be conducted, shall be given by the said Special Master by advertisement which shall describe briefly the property to be sold, the time, place
6260 and where the sale is to take place, and the conditions upon which it is to be conducted; which advertisement shall be published at least once in each week for the term of four successive weeks preceding the day of sale in at least one newspaper in each of the following cities, namely: New York City, New York, and Denver, Colorado.

The Receivers shall file with the Clerk of the Court at Denver within ten days after the entry of this decree an approximate statement as nearly correct as they are able to make the same of the amount of moneys in their hands, the amount of moneys owing to them and the amount of their liabilities, fixed and contingent, resulting from the operation of the mortgaged premises as they will be at the time of the sale, and the Master shall insert a brief summary of this statement in his notice of sale.

The properties constituting the premises embraced by and included in the said first mortgage of the Denver Pacific Railway and Telegraph Company shall, for the purposes of said sale, be divided into three separate parcels, which parcels shall respectively be designated and embrace properties as follows:

Parcel 1. All and singular the lands not heretofore sold and conveyed by the Denver Pacific Railway and Telegraph Company or its successor, the said The Union Pacific Railway Company, and not released by the complainants from the lien of said first mortgage, which had been granted to the Denver Pacific Railway and Telegraph Company, or to The Union Pacific Railway Company, its successor, by the Congress of the United States by an act entitled: "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military and
6261 other purposes," approved July first, 1862, and the amendatory Act of Congress, approved July second, 1864, and by the Act

of Congress, approved May seventh, 1866, entitled "The resolution extending the time for the completion of the Union Pacific Railway Company, Eastern Division," and by the Act of Congress approved July third, 1866, entitled "An Act to amend the aforesaid act approved July first, 1862, and July second, 1864;" and by the Act of Congress, approved March third, 1869, entitled "An Act to authorize the transfer of lands granted to the Union Pacific Railway Company, Eastern Division, between Denver and the point of its connection with the Union Pacific Railroad to the Denver Pacific Railway and Telegraph Company, and to expedite the completion of railroads to Denver, in the Territory of Colorado;" and by any and all other Acts of Congress making grants of lands to or for the benefit of the said Denver Pacific Railway and Telegraph Company, or its successor, the said The Union Pacific Railway Company, and any and all lands to which the said The Union Pacific Railway Company, as the successor of the said Denver Pacific Railway and Telegraph Company, is or may be entitled under the said Acts of Congress, or any of them, and all rights, titles, estates and interests therein in possession or expectancy now existing or hereafter to accrue of the said Denver Pacific Railway and Telegraph Company, and its successor, The Union Pacific Railway Company, in and to said lands granted by Congress as aforesaid, and to each and every part thereof, whether in this decree specifically described or not, as well as the right hereafter to receive from the United States any of the said lands granted as aforesaid, whether in place or indemnity limit or by way of
6262 indemnity, together with all the right, title, interest, estate and claim of the said Denver Pacific Railway and Telegraph Company, or of the said The Union Pacific Railway Company, in and to said lands, or any part thereof, and all the rights of the said companies, or either of them, hereafter to receive from the United States patents therefor.

Where the term "granted lands and granted rights" is hereafter used in this decree it shall be deemed and designated to embrace the lands included in this parcel.

Parcel 2. All and singular the land contracts, notes and bills receivable held by the said complainants as trustees under said mortgage covering or appertaining to said granted lands, and sales or contracts for sales thereof.

When the term "land contracts and notes" is hereafter used in this decree it shall be deemed to designate and embrace the property included in this parcel.

Parcel 3. All and singular the railroad and railroad property, line of telegraph and all property, rights and franchises connected therewith or appertaining thereto embraced in said mortgage of the Denver Pacific Railway and Telegraph Company as hereinbefore found, including any property and income owned or received by the said Receiver or Receivers in this cause through the operation of the mortgaged premises, and any property acquired by the Receivers incident and appurtenant to the said railroad, and any

property purchased or acquired by the Receivers in said Ames cause for the operation or maintenance thereof.

When the term "railroad property" is hereafter used in this decree it shall be deemed to designate and embrace all the property included in this parcel.

6263 The said Special Master shall first offer for sale the properties embraced in said "Parcel 1," and shall note the highest bid therefor, and, in the event that such highest bid shall be less than the debt secured by said first mortgage for principal and interest, whether matured at the date of this decree or not, then said Special Master shall proceed to offer for sale the properties embraced in "Parcel 2," and shall note the highest bid therefor, and in the event that such highest bid, together with the highest bid for the property embraced in "Parcel 1," shall be less than the amount of said mortgage debt, then said Special Master shall proceed to offer for sale the properties embraced in "Parcel 3," and shall note the highest bid therefor, and in the event that such highest bid, together with the highest bids theretofore received upon said preceding offers shall be less than the said mortgage debt, then the said Special Master shall thereupon proceed to offer the entire mortgaged premises for sale in one lot or parcel, being all of the said properties theretofore so separately offered by him. If the highest sum bid for the said mortgaged premises as an entirety shall exceed the aggregate amount of the highest separate bids which shall have been made for said premises as offered in parcels, then the Special Master shall accept the said bid for the said mortgaged premises as an entirety, but if the amount offered for said premises in gross or as an entirety shall be less than the said aggregate amount of said separate bids, then the said Special Master shall accept the said highest separate bids so noted by him if said bids shall amount to $2,000,000, the upset price herein fixed for the mortgaged premises, and if said separate bids shall not amount to said sum he shall not accept any of them.

6264 XXI. Said lands and land rights shall be offered in the following manner and upon the following terms:

All of said lands and land rights embraced in "Parcel 1" shall be offered for sale by said Special Master in single sections or subdivisions thereof, if there are any bidders for such sections or subdivisions thereof; and said Special Master shall announce at such sale that he will receive bids for any particular section or particular subdivision of any section of said lands. If there are no bidders for any particular section of said lands or subdivision thereof, then all said lands not sold in sections or subdivisions thereof shall be offered for sale in one parcel by said Special Master. Said Special Master shall receive no bid from any one offering to bid for all of such lands and rights who shall not first deposit with him as a pledge that he will make good his bid in case of acceptance, the sum of fifty thousand dollars in cash, and he shall receive no bid from any one offering to bid for any separate sections or subdivisions of sections of

land who shall not first deposit with him, as a pledge that he will make good his bid, in case of acceptance of the same, the sum of $10 per section for each section, or a proportionate amount thereof for any subdivision of any section, for which said bidder desires to bid.

" Purchasers of separate sections or subdivisions of sections under the preceding provision shall take the same and the title thereto free from the charges and liabilities specified in article XXVIIth hereof.

The purchaser or purchasers at said sale or sales of said lands and land rights, made under any of the provisions of this decree,
6265 his or their successors or assigns, shall acquire, take, receive, hold and enjoy the full, absolute, indefeasible and complete right and title to said lands, and every part and parcel thereof, including all rights and titles to said land that heretofore were vested in the Denver Pacific Railway and Telegraph Company, or its successor The Union Pacific Railway Company, including also the right to acquire patents from the United States for the lands granted as aforesaid by Congress to aid in the construction and equipment of said railroad, and all other rights under such grant, as fully and completely as the defendant The Union Pacific Railway Company now holds or enjoys, or the Denver Pacific Railway and Telegraph Company held or enjoyed at the time of the execution and delivery of said First Mortgage, or at any time since was or is or may be entitled to hold or enjoy the same; it being the intention of this decree in this behalf to sell to the purchaser all of the lands granted as aforesaid by Congress to aid in the construction of said railroad not heretofore sold and conveyed by said Company and released by the complainants as Trustees and all rights in, to, of, or concerning the same, in possession or expectancy, and to make such purchaser or his assignee the full and complete assignee of the said Company and of said Mortgage as to all lands sold under this decree in all respects whatever, free of any claims of the parties to this cause or any of them, whether said lands are particularly described in this decree or the Master's said report and the schedules attached thereto or not.

XXII. Said land contracts and notes shall be offered for sale in the following manner upon the following terms:

If the land contracts and notes embraced in said " Parcel 2 " shall be offered for sale as provided in Article XX. hereof in
6266 one parcel, then the said Special Master shall receive no bid from any one offering to bid therefor who shall not first deposit with him as a pledge that he will make good his bid in case of acceptance the sum of fifty thousand dollars in cash.

XXIII. Said railroad property embraced in " Parcel 3 " shall be offered for sale in the following manner and upon the following terms:

If said railroad property embraced in and covered by the First Mortgage and embraced in said " Parcel 3 " shall be offered as an entirety and in one parcel, as provided in Article twenty, then the Special Master shall receive no bid for said railroad property from

any one offering to bid who shall not have first deposited with him, as a pledge that he will make good his bid in case of its acceptance, the sum of $400,000 in cash or First Mortgage bonds.

XXIV. The entire mortgage premises shall be offered for sale in the following manner and upon the following terms:

If the granted lands and rights appertaining thereto, being the property embraced in "Parcel 1;" the property embraced in "Parcel 2" and the railroad property embraced in "Parcel 3" shall together be offered for sale by the said Special Master as an entirety and in a single lot, as provided in Article XX. hereof, then the said Special Master shall receive no bid from any one offering to bid for said entire property and premises unless such person so offering to bid shall have first deposited with him, as a pledge that he will make good his bid in case of its acceptance, the sum of $500,000 in cash, or First Mortgage bonds, provided, however, that any amount or amounts deposited by any person to qualify him as a bidder
6267 for any separate parcel or parcels shall be credited as part of the deposit hereby required to be made to qualify such person as a bidder for the entire mortgaged premises. The said Special Master shall accept no bid for said entire mortgaged premises less than the sum of two million dollars ($2,000,000) and unless such sum shall be bid therefor, or unless the aggregate amount of the highest separate bids for said parcels, as separately offered for sale, shall be equal to said last mentioned amount, the Special Master may adjourn the sale and all sales provided to be made under this decree, and apply to the Court for further instructions.

XXV. *Payments by the purchaser.*—Upon the acceptance of any bid made for any parcel of said mortgaged premises, or for said entire mortgaged premises, the person or persons making the same shall make payments in cash or in cash and first mortgage bonds, or unpaid past due coupons appertaining thereto at the rate at which said bonds and coupons shall be receivable, as hereinafter provided, of the sum remaining due upon such bid after the application thereto of the amounts theretofore deposited, as follows:

Twenty-five per cent (25%) of such amount remaining due on such bid shall be paid within thirty days after the confirmation of the sale; a further twenty-five per cent (25%) of such amount shall be paid within forty days after such confirmation; a further twenty-five per cent (25%) of such amount shall be paid within fifty days after such confirmation, and the further twenty-five per cent (25%) of such amount shall be paid within sixty days after such confirmation: provided, however, that the purchaser or purchasers shall have the right to anticipate all or either of said payments by mak-
6268 ing the same, or any of them, at an earlier time or earlier times than herein fixed.

In case any bidder or purchaser shall fail to make good his bid upon its acceptance by the Special Master by making any of the additional payments, as hereinbefore provided, in consummation of his purchase, then the sums paid or deposited by such bidder or

purchaser, as hereinbefore provided, shall be forfeited as a penalty for such failure, and shall be applied towards payment of the expenses of a resale and towards making good any deficiency or loss in case the property shall be sold at a less price upon such resale, and to any other and further purposes which the Court may direct.

Any party to this cause or any holder or holders of any of said first mortgage bonds may bid and purchase at any sale under this decree.

If any sale for which a deposit has been made shall not be confirmed by the Court, such deposit shall be returned to the bidder, and the deposit of any unsuccessful bidder shall be returned to him when a bid has been accepted.

The Special Master shall have the power and right to, and may, at the request of complainants' solicitors, adjourn or postpone any sale or sales under this decree from time to time, and may, without further notice, proceed with said sale or sales on any day to which the same may have been postponed or adjourned, and may, at his option, give such further notice of such sale or of said postponement or adjournment as he may think proper or as the complainants may request.

XXVI. *How payments to be made.*—The balance of any purchase price not hereinbefore required to be deposited in cash may
6269 either be paid in cash or the purchaser may satisfy and make good the balance of his bid in whole or in part by turning in to be cancelled or credited said first mortgage bonds and coupons to be paid out of the proceeds of sale upon distribution thereof, and such purchaser shall be credited therefor on account of the purchase price such sums in cash as would be payable on such bonds and coupons out of the proceeds of sale, if the whole amount of the purchase price were paid in cash.

Any deposits or payments required by the terms of this decree to be made in cash may be made by delivery of a certified check or checks or certificate or certificates of deposit, upon any national bank or trust company, in favor of or to the order of said Special Master and satisfactory to him.

The Master may in his discretion accept temporarily, instead of the manual delivery of the bonds, the certificate of any trust company which he may select, that it holds First Mortgage Bonds secured by the mortgage foreclosed herein, subject to the order of the Master, and will deliver them to him on demand for cancellation or other disposition.

The Court reserves the right to resell the property or any parcel thereof upon such notice as the Court shall direct in case any purchaser shall fail or omit to make any payment on account of any purchase price, as hereinbefore required.

XXVII. *Obligations assumed by the purchaser.*—The purchaser or purchasers, or his or their successors or assigns, shall, as part consideration and purchase price of the railroad property purchased under this decree, and in addition to the sums hereinbefore re-

6270 quired to be paid, and paid, take the same and receive the deed or deeds therefor upon the express condition that he or they, or his or their successors or assigns shall pay, satisfy and discharge.

First. Any unpaid compensation which has been or shall be allowed by the Court to the Receivers in this cause, or their Solicitors, and all unpaid indebtedness and obligations, if any such there be, which shall have been legally contracted or incurred by them in said cause, in the operation or on account of the railroad property embraced in said first mortgage of the Denver Pacific Railway and Telegraph Company at any time before the same shall be delivered to the purchaser or purchasers; and also any such unpaid compensation which has been or shall be allowed by the Court to the Receivers or their solicitors in the cause in which Oliver Ames, Second, Samuel Carr and others are complainants, and the Union Pacific Railway Company and others are defendants, pending in this Court and known as the "Ames Cause" and all such unpaid indebtedness, obligations and liabilities of the said Receivers in said Ames cause which shall have been allowed or legally contracted or incurred by the said Receivers in the operation of said property embraced in said first mortgage, and shall be properly chargeable to said property, to the extent to which the revenues and assets in the hands of said Receivers in said Ames cause shall be insufficient to pay and discharge such compensation, indebtedness, obligations and liabilities in said cause.

Second. Any indebtedness or liability contracted or incurred by the defendant The Union Pacific Railway Company or by the said Receivers in the said Ames cause, in the operation of the railroad property covered by and embraced in the said first mort-

6271 gage, prior to the appointment of the Receivers in this cause, which are superior in equity to said first mortgage aforesaid, and payment whereof was provided for by order of this Court, dated November 19, 1894, and the order of this Court dated February 23rd, 1895, in this cause, and which shall not, at the time of such delivery of possession, have been paid or satisfied out of the income of the property in the hands of the Receivers upon the Court adjudging the same to be prior in lien to said first mortgage, and directing payment thereof; provided that suit be brought for the enforcement of such indebtedness or liability incurred by said railway company or Receivers within the period allowed by the Statute of Limitations applicable thereto, after such indebtedness or liability was contracted or arose.

XXVII. Ib. *Mode of payment.*—In the event that the purchaser or purchasers of said railroad property, or his or their assigns shall refuse, after demand, to pay any such debt or liability, the person holding the claim thereof, when established by a court of competent jurisdiction, may upon ten days' notice to said purchaser or purchasers, their successors or assigns, file his petition in this Court to have said claim enforced against the property aforesaid in accordance with the usual practice in claims of a similar character; and such purchaser or purchasers, his or their successors or assigns, shall

have the right to appear and make defense to any claim, debt or demand so sought to be enforced, and either party shall have the right to appeal from any judgment, decree or order made thereon or with respect thereto. Jurisdiction of this cause is retained by this Court for the purpose of the foregoing provisions of this decree, and
6272 the Court reserves the right to retake and resell said property in case the purchaser or purchasers, his or their successors or assigns, shall fail to comply with any order of this Court in respect to the payment of such prior indebtedness or liability within thirty days after service of a copy of judgment, decree or order requiring such payment; subject, however, to all rights of appeal and stay of proceedings provided by law or which are hereinafter set forth.

Such purchaser or purchasers, and his or their successors or assigns, shall have the right to enter his or their appearance in this Court or in any other Court, and he or they or any of the parties to this cause shall have the right to contest any claim, demand or allowance existing at the time of the sale, then undetermined, or any claim or demand which may arise or be presented thereafter which would be payable by such purchaser or purchasers, his or their successors or assigns, or which would be chargeable against the property purchased in addition to the amount paid by said purchasers at such sale, and may appeal from any decision relating to any such claim, demand or allowance, and shall have and enjoy all rights to stay or supersedeas as fully as if a party thereto.

Any unpaid compensation which has been or shall be allowed by the Court to the Receivers in this cause, or their solicitors, and all the unpaid indebtedness and liabilities of the Receivers incurred in the management and operation of the mortgaged premises since October 13th, 1893, which is either established or unquestioned at the time of the delivery of the Master's deed, shall be then paid by the purchaser or his assigns without the proceedings contemplated by this article.

6273 The purchaser or purchasers of said railroad property, his or their successors or assigns, shall have the right within ninety days after the confirmation of the sale and the delivery of the deed as hereinafter provided, to elect which of the leases and contracts sold with the railroad and other property and franchises such purchaser or purchasers, his or their representatives or assigns, desire to assume and accept, and shall not be held to have assumed any of said leases or contracts which he or they shall elect not to assume and accept.

XXVIII. *Application of proceeds of sale.*—It is further ordered, adjudged and decreed, that the funds arising from the sale of the said property and premises shall be applied as follows:

First. To the payment of the costs of this cause and of all proper expenses attending upon such sale or sales, including the compensation of the Special Master appointed to make the sale, and the payment of all charges, compensations, allowances and disbursements of the complainants, as trustees of their predecessors in said trust, or

either of them, and each of their solicitors and counsel, and also all other proper charges on the trust estate, allowances, compensation and disbursements to parties or their counsel. All of the payments to be made under this subdivision may be hereafter fixed and allowed and taxed by the Court or under its direction.

The amount of $120,367.86 in cash, hereinbefore found to be in the hands of the trustees, complainants herein, shall be applicable to and shall be applied, so far as necessary, to the payment of such allowances. Any excess thereof shall be added to the proceeds of
6274 sales of property under this decree, and distributed as part of such proceeds under the provisions of this decree.

Second. A sum equivalent to interest at the rate of six per cent. per annum, from the date of this decree to a date of payment to be fixed by the Special Master, upon the entire amount of the purchase price applicable to first mortgage bonds and coupons, which shall not have been presented by the purchaser on account of his bid.

Third. The balance of the funds realized from such sale shall be applied to the payment of the amount herein decreed to be due at the date of this decree, to wit, $3,608,747.18, with interest thereon from the date of this decree to date of payment, and any balance of the purchase price of said property shall be applied in payment of the principal of the bonds secured by the said first mortgage, the Court finding it to be necessary to prevent the dismemberment of said property, and consequent great and irreparable injury to all parties and interests concerned, and to be agreeable with the provisions of the said mortgage in this behalf, and the complainants and the defendants the Union Pacific Railway Company and the Mercantile Trust Company by their solicitors thereto consenting in open court, it is accordingly here ordered, adjudged and decreed that all of the property embraced in and covered by said first mortgage should be sold as herein provided, and that any excess of the purchase price thereof over the sum now herein decreed to be due at the date of this decree shall be applied to the payment of the principal of the bonds secured by said mortgage, the said complainants having consented as aforesaid to receive such excess and to apply the same on such principal sum, and to rebate to the extent of such
6275 payment the interest which would thereafter by the terms of such bonds grow due thereon. If such excess is not sufficient to pay such principal in full, then such excess shall be applied pro rata on the said bonds. Any detached coupons for interest on said bonds shall be stamped in such manner as to indicate that they have been partially paid; or, if paid in full, they shall be cancelled.

Fourth. If, after making all the foregoing payments, there shall be any surplus, then the same shall be applied as the Court shall thereafter order and direct.

When the Special Master shall be prepared to pay out of the proceeds of sale and money in his hands under this decree the bonds and coupons to be paid as above specified, he shall give notice of the time when and place where he will be prepared to make such pay-

ment, by publication for at least once a week, for two consecutive weeks, in a newspaper published in each of the following cities, viz: Denver, Colorado, New York, New York; and no holder of any claim to bonds and coupons of the payment of which notice shall have been so given, who shall fail to present the same for payment at the time and place specified, shall be entitled to the payment of any interest thereon after that date out of the proceeds of such sale.

The Master shall pay upon each bond and coupon presented to him for payment at or before the date fixed for payment in his notice, the amount applicable to the payment thereof, and he shall deposit in the registry of this Court an amount sufficient to pay the amount applicable to the payment of all said bonds and coupons which shall not be presented to him either in payment of the bid made for
6276 the property or for payment in cash, together with one per cent. of such amount for Clerk's fees, which shall be paid by the purchaser as a part of the costs herein. He shall report the amount applicable to the payment of each of said unpresented bonds and coupons and the numbers and amounts of such bonds, and thereafter the Clerk of the Court shall, upon the usual order of the Court, pay and stamp such unpresented bonds and coupons when presented to him, and he shall cancel any such bonds or coupons that are paid in full, and he shall properly stamp the bonds and coupons that are but partly paid and return them to the party or persons presenting them without filing same. The amount credited to each bond presented in payment of the accepted bid and the amount paid upon each bond presented to the Master for payment shall be stamped on such bond by him as paid and the coupons presented to him for either of such purposes shall be stamped paid or partly paid, as the case may be. The Master shall cancel all bonds and coupons that are paid in full by him.

XXIX.—*Master's deed—Its effect.*—It is further ordered, adjudged and decreed that, upon payment of the purchase price by the purchaser or purchasers of said property, or upon the making of such provision for the payment thereof as the Court shall approve, the said Special Master making the sale shall execute and deliver a good and sufficient deed or deeds, conveying the property purchased to such purchaser or purchasers, or his or their successors or assigns, and that upon the execution and delivery of such deed or deeds, the grantee or grantees shall be let into possession of the premises conveyed, and that the said Receivers and any party to this cause who is in possession of any of the same, shall deliver such property
6277 over to the purchaser or purchasers, his or their successors or assigns, and shall deliver to the purchaser or purchasers of said railroad property and to his or their successors or assigns, any property acquired by the Receivers in the said Ames cause, or in this cause, for or appropriated by them to the use of the line of railroad in said first mortgage mentioned, that has not been applied, or shall not be applied, in pursuance of the orders of this Court. Such possession shall nevertheless be subject to the condition that this Court

may retake and resell the property conveyed in case the purchaser or purchasers, his or their successors or assigns, shall fail to pay any balance of the purchase price remaining unpaid, or to comply with any other provision contained in this decree.

The purchaser or purchasers, and his or their successors or assigns shall, after such delivery of the premises and property purchased, hold, enjoy and possess the same and an absolute and indefeasible title thereto, together with all the rights, privileges, immunities and franchises thereto appertaining, as fully and completely as the defendant The Union Pacific Railway Company has heretofore held, owned or enjoyed, or now holds, owns or enjoys the same; and the purchaser or purchasers, and his or their successors and assigns, shall thereupon be entitled to have and to hold the said railroads, lands and premises so purchased and conveyed, free, and discharged from all the liens, claims and charges of each and every defendant herein, and of all the parties to this suit and those claiming under them, except only as hereinbefore expressly reserved.

XXX. *Deed by railway company and trustees.*—The defendant The Union Pacific Railway Company shall, at the time of the
6278 execution of the said deed or deeds by said Special Master, as a further assurance to the purchaser or purchasers, execute its deed or deeds, or join with the said Special Master in the execution of the deed or deeds to be made by him, and shall thereby convey and release to the purchaser or purchasers, and his or their successors or assigns, all its right, title, and interest in and to the property conveyed by said Special Master to the said purchaser or purchasers.

The said complainants Russell Sage and George J. Gould, as trustees under said first mortgage, hereby foreclosed, shall likewise at the time of the execution of said deed or deeds, transfer and release to such purchaser or purchasers, and his or their successors or assigns, all their right, title and interest under the said first mortgage in and to the property so conveyed; and the Receivers heretofore appointed in said Ames cause and in this cause shall make and deliver a sufficient deed or deeds conveying and assigning to the purchaser or purchasers, and his or their successors or assigns, all their right, title and interest in, of or to any property vested or standing in their names, or to which they have acquired title as such Receivers in the management and operation of the premises covered by and embraced in said first mortgage, and conveyed to such purchaser or purchasers.

XXXI. *Accounts of trustees.*—It is further ordered, adjudged and decreed that the complainants Russell Sage and George J. Gould shall deliver to the purchaser or purchasers thereof all and singular the accounts and bills receivable held by them in trust under said first mortgage. Upon the said trustees paying over the moneys in their hands as above decreed, and delivering the
6279 accounts and bills receivable held by them in trust as aforesaid, the said trustees shall thereupon stand released and discharged from the said trust, and from all obligations and liabilities in respect

thereof except as to moneys or property hereafter coming into their hands as such trustees.

XXXII. *Re deficiency judgment.*—It is further ordered, adjudged and decreed that in case the proceeds of such sale or sales shall not be sufficient to pay in full the amounts hereinbefore found to be due upon said first mortgage bonds and coupons, then the said Special Master shall report to the Court the amount of the deficiency, and on the confirmation of said report said complainants as trustees under said first mortgage shall have judgment against the defendant The Union Pacific Railway Company for the amount of the deficiency due upon said bonds and coupons, and shall have execution therefor pursuant to the rules and practice of this Court.

XXXIII. *Special Master appointed.*—It is further ordered, adjudged and decreed, that William D. Cornish, of St. Paul, Minnesota, be, and he is hereby appointed Special Master to execute this decree and to make the sale or sales and to execute and deliver the deed or deeds of conveyance of the property sold to the purchaser or purchasers thereof upon confirmation of said sale or sales and payment of the purchase prices thereof, as herein provided, and this Court reserves the right at any time to appoint another Master with the same powers as the one herein appointed, in case of the inability for any reason of the Special Master herein appointed to act or perform the duties of his office or in reference to his office. As soon as
6280 any sale or sales have been made by such Special Master in pursuance of this decree, he shall report the same to this Court for confirmation, and shall from time to time thereafter make such further and supplemental reports as shall be necessary to keep the Court and the parties to this cause properly advised of his proceedings in the execution of this decree.

XXXIV. *Matters reserved.*—It is further ordered, adjudged and decreed, that all issues, questions, matters and things not hereby disposed of, including the discharge of the Receivers and the statement and settlement of their accounts, are hereby reserved by this Court for its future adjudication; and that any party to this cause may at any time apply to this Court for further relief at the foot of this decree in respect to matters not therein specifically provided for.

WALTER H. SANBORN,
U. S. Circuit Judge, Eighth Circuit.

Mr. LOVETT. It is stipulated that afterward an ancillary bill of complaint was filed and an ancillary decree of foreclosure, substantially in the form of Defendants' Exhibit 31, was rendered in the Circuit Court of the United States for the District of Wyoming, in the foreclosure proceeding last mentioned. Pursuant to the said decree of foreclosure, the property covered thereby was sold, on the 21st day of February, 1898, to Alvin W. Krech and Lawrence Greer, for the sum of two million dollars, and such sale was duly reported to the Court by the Special Master making the same.
6281 I now offer in evidence Defendants' Exhibit 32, being copy of order confirming the said sale.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 32 is as follows:

DEFENDANTS' EXHIBIT 32.

ORDER CONFIRMING SALE.

Upon motion of Alvin W. Krech and Lawrence Greer, appearing by Winslow S. Pierce, their solicitor, and the complainants and each and every defendant consenting by stipulation annexed hereto and the Court being duly advised in the premises; it is

Ordered that the Special Master's report of sale, filed herein on the 21st day of February, 1898, be, and it is hereby in all things ratified, approved and confirmed, and that said sale therein reported is hereby made absolute, subject, however, to all the terms and conditions of the said decree, and to the due performance by the purchasers or their successors or assigns, of all the obligations therein prescribed.

WALTER H. SANBORN,
Circuit Judge.

Dated March 14, 1898.

Filed and entered March 16, 1898.

6282 Mr. LOVETT. I now offer Defendants' Exhibit 33, being copy of the assignment by said Krech and Greer of their said bid to Union Pacific Railroad Company.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 33 is as follows:

DEFENDANTS' EXHIBIT 33.

(Denver Pacific.)

ASSIGNMENT OF BID.

Know all Men by these Presents, That

Whereas, in a certain cause pending in the Circuit Court of the United States for the District of Colorado in which Russell Sage and George J. Gould, Trustees, are complainants, and The Union Pacific Railway Company and others, are defendants, a certain decree of foreclosure and sale was entered by the said Court on the 31st day of July, 1897; and

Whereas, in a certain cause ancillary thereto and pending between the same parties in the Circuit Court of the United States for the District of Wyoming, a certain decree was entered by said Court on the 31st day of July, 1897, by which said decree it was, among other things, adjudged and decreed that the decree rendered in said cause by the United States Circuit Court for the District of Colorado be rendered and pronounced as the decree of the said Court in said an-

cillary cause and should be executed upon the terms and conditions therein prescribed, and that the execution of said decree rendered by said Circuit Court of the United States for the District of
6283 Colorado, according to its terms and conditions, should be deemed and held to be the execution of the decree of the said Court in said ancillary cause in all respects whatsoever; and

Whereas, by said decree it was, among other things, adjudged and decreed that the said The Union Pacific Railway Company pay or cause to be paid within twenty days after the entry of said decree to the complainants in said cause for the use and benefit of the holders of interest coupons issued under and secured by the First Mortgage of the Denver Pacific Railway and Telegraph Company the amount in said decrees found to be due with interest thereon, and that in default of such payment within said time all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock, lands, land grants and property of every kind and description embraced in and covered by said First Mortgage of the Denver Pacific Railway and Telegraph Company should be sold as in said decrees directed at the front door of the Court House of the County of Arapahoe, in the City of Denver, in the State of Colorado, by William D. Cornish, the Special Master appointed by said decrees, at public auction to the highest bidder or bidders on a day or days to be fixed by the said Special Master, after giving notice of said sale, as in said decrees specified; and

Whereas, neither the said The Union Pacific Railway Company, nor any one claiming under it, nor any one for its account; nor any one of the defendants in said causes, paid or caused to be paid within the time directed in said decrees, or at any other time, the amount therein found to be due as aforesaid; and

Whereas, the said Special Master, in pursuance of said de-
6284 crees, due notice having been given as therein prescribed and according to law, did duly sell at public auction at the front door of the Court House of the County of Arapahoe in the City of Denver, in the State of Colorado, on the 21st day of February, 1898, all and singular all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock, lands, land grants and property of every kind and description embraced in and covered by said First Mortgage of the Denver Pacific Railway and Telegraph Company, and in the said decrees described, as an entirety and in one parcel, to Alvin W. Krech and Lawrence Greer, for the sum of $2,000,000; the said Alvin W. Krech and Lawrence Greer being the highest and best bidders for said property at said sale and having duly and seasonably qualified as bidders at said sale, as required by said decrees in that behalf; and

Whereas, the said Special Master did duly make and file his report of said sale in the said Courts, which said report and the sale therein reported have been, upon due notice, by orders of the said courts, duly confirmed; and

Whereas, the said Alvin W. Krech and Lawrence Greer have in all respects to the date of these presents complied with the provisions of the said decrees of foreclosure and sale and have made payment of the purchase price for said property; and

Whereas, in said decrees it is, among other things, provided that upon payment of the purchase price by the purchasers of said property, or upon making such provision for the payment thereof as the Court should approve, the said Special Master appointed by said decrees and making said sale shall execute and deliver a good and sufficient deed or deeds conveying all the said railroad,
6285 telegraph, rolling stock, lands, land grants and property of every kind and description in said decrees described and ordered to be sold to the purchaser or purchasers or his or their successors or assigns; and

Whereas, the Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, is desirous of acquiring, and is authorized to acquire the said bid or contract of purchase of said Alvin W. Krech and Lawrence Greer, and all their rights thereunder, including their right to receive a deed or deeds pursuant to the said decrees, for the property, railroad, lands, land grants and premises purchased by the said Alvin W. Krech and Lawrence Greer at the said sale; and the said Railroad Company has made and has agreed to make payment and provision for the payment for said property satisfactory to said Alvin W. Krech and Lawrence Greer and has agreed to perform and assume all of the obligations required by said decrees and orders to be performed and assumed by said Alvin W. Krech and Lawrence Greer by reason of their said bid and purchase at said sale;

Now therefore these presents witness:

That the undersigned, Alvin W. Krech and Lawrence Greer, in consideration of the premises, and other good and valuable considerations, have sold, assigned, transferred and set over and hereby do sell, assign, transfer and set over unto said Union Pacific Railroad Company, its successors and assigns, their said bid and their right to receive conveyance of the said railroad, franchises, lands, land grants and property so purchased by them and all their other rights under said decrees or by virtue of their said bid and purchase in and
6286 to said premises, being all the railroad, telegraph, franchises, rights, functions, immunities, rolling stock, lands, land grants and property of every kind and description embraced in and covered by the said First Mortgage.

To have and to hold the same unto the said Union Pacific Railroad Company, its successors and assigns, to its and their own use forever; subject, however, to all the conditions, restrictions and reservations in said decrees set forth, and subject, further, to the performance in the manner set forth in said decrees by the said Union Pacific Railroad Company, of all the acts and things required by said decrees to be performed by the said purchasers at said sale and now remaining unperformed, and said Alvin W. Krech and Lawrence Greer do

hereby direct and request that the deed or deeds directed by the said decrees to be made to the purchaser or purchasers at said sale, or his or their successors or assigns, conveying and releasing said property as in said decrees provided, be made and delivered to said Union Pacific Railroad Company, its successors and assigns.

And these presents further witness that:

Union Pacific Railroad Company hereby accepts the foregoing assignment and covenants and agrees to pay, satisfy and discharge, and to indemnify and forever hold harmless said Alvin W. Krech and Lawrence Greer, their executors and administrators, from and against any and all losses, damages, expenses and liabilities whatsoever which may have been incurred, or hereafter may be incurred, by said Alvin W. Krech and Lawrence Greer, or either of them, by reason of their said bid and the acceptance thereof or by reason of any acts and things required by said decrees or said orders
6287 confirming said sale to be performed by said Alvin W. Krech and Lawrence Greer.

Five originals of this instrument have been executed, each of which shall be deemed an original and all collectively as one instrument.

In witness whereof, the undersigned, Alvin W. Krech and Lawrence Greer, have hereunto set their hands and affixed their seals, and Union Pacific Railroad Company has caused these presents to be executed by its President and its corporate seal to be hereto affixed attested by its Secretary, this 21st day of March, 1898.

ALVIN W. KRECH, (SEAL.)
LAWRENCE GREER, (SEAL)
Purchasers.

In the presence of:
Walter S. Wilson.

UNION PACIFIC RAILROAD COMPANY.
By HORACE G. BURT, *President.*

(SEAL.)
Attest:
ALEX. MILLAR, *Secretary.*

6288 Mr. LOVETT. I now offer Defendants' Exhibit 34, being copy of the deed from William D. Cornish, Special Master, and others, to Union Pacific Railroad Company, dated March 22, 1898, conveying the property sold under the Denver Pacific Railway and Telegraph Company mortgage.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 34 is as follows:

DEFENDANTS' EXHIBIT 34.

Indenture, made the 22nd day of March, A. D. 1898, between William D. Cornish, of St. Paul, Minnesota, as Special Master appointed by the decrees entered in the causes hereinafter mentioned

by the Circuit Courts of the United States for the District of Colorado and the District of Wyoming—party of the first part;

Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Deane, Receivers of the property of The Union Pacific Railway Company, appointed by the said Circuit Courts of the United States in the causes hereinafter mentioned—parties of the second part;

Russell Sage and George J. Gould, as Trustees under the mortgage or deed of trust hereinafter mentioned executed by the Denver Pacific Railway and Telegraph Company and bearing date the tenth day of August, 1869—parties of the third part;

The Union Pacific Railway Company, a corporation formed by the consolidation of The Union Pacific Railroad Company,
6289 with the Kansas Pacific Railway Company and the said Denver Pacific Railway and Telegraph Company—party of the fourth part;

Alvin W. Krech and Lawrence Greer, both of the City of New York—parties of the fifth part; and

Union Pacific Railroad Company, being a new corporation or body politic and corporate organized and existing under and pursuant to the laws of the State of Utah—party of the sixth part;

Whereas, the Denver Pacific Railway and Telegraph Company, a corporation created under and by virtue of the laws of the territory of Colorado, executed a mortgage or deed of trust (herein called its First Mortgage), bearing date the 10th day of August, 1869, whereby it conveyed to John Edgar Thomson, Adolphus Meier and John Evans, as trustees, and to their successors, heirs and assigns forever, all and singular the lands, land grant, railroad, property and franchises in said mortgage described (the same being embraced in the lands, land grant, railroad property and franchises hereinafter described and conveyed) to secure certain bonds of the said Denver Pacific Railway and Telegraph Company (herein called its First Mortgage bonds), of which there were issued and out-standing on the 31st day of July, 1897, bonds in the aggregate amount of $975,000 besides interest thereon; and

Whereas, Russell Sage and George J. Gould, the parties of the third part to this indenture, were duly appointed substituted trustees under the said First Mortgage, and at the time of filing their bill of complaint hereinafter mentioned, were, and now are, the sole substituted trustees under said First Mortgage; and

Whereas, on or about the 24th day of January, 1880, said the Denver Pacific Railway and Telegraph Company, under and pur-
6290 suant to Acts of Congress in that behalf, was consolidated with the Kansas Pacific Railway Company and The Union Pacific Railroad Company, and by such consolidation said The Union Pacific Railway Company, party of the fourth part hereto, was formed and became the successor to the said Denver Pacific Railway and Telegraph Company, which executed the First Mortgage aforesaid; and

Whereas, the said The Union Pacific Railway Company having become insolvent and having made default in the payment of all the interest and interest coupons which matured on and since the 1st day of May, 1878, upon all of the outstanding bonds secured by said mortgage, the said Russell Sage and George J. Gould, trustees as aforesaid, filed in the Circuit Court of the United States, for the District of Colorado, their bill in equity against The Union Pacific Railway Company and various other defendants to foreclose said First Mortgage; and such proceedings were thereupon had in the said cause that, on the 31st day of July, 1897, a certain decree of foreclosure and sale was entered by said Circuit Court of the United States for the District of Colorado, wherein and whereby it was adjudged and decreed that said The Union Pacific Railway Company pay, or cause to be paid, within twenty days after the entry of said decree, certain amounts therein found to be due under the said First Mortgage, and that in default of such payment by said The Union Pacific Railway Company, or by some one claiming under it or by some one for its account, or by some of the defendants in the said cause within the time aforesaid, the said mortgaged premises, property and franchises should be sold as provided in the said decree; and

Whereas, a similar and ancillary cause was pending between
6291 the same parties in the Circuit Court of the United States for the District of Wyoming, in which District a portion of the mortgaged premises, property and franchises was situated; and said decree entered by the Circuit Court of the United States for the District of Colorado on the 31st day of July, 1897, was adopted, rendered and announced as the decree of said Circuit Court of the United States for the District of Wyoming in said similar and auxiliary cause therein pending, by a decree entered by said Court on the 31st day of July, 1897, to which said suits and to the proceedings and record thereof in each of the said Courts, including said Circuit Court of the United States for the District of Colorado, reference is hereby made; and

Whereas, neither The Union Pacific Railway Company nor any one claiming under it nor any one for its account, nor any of the defendants in either of the said causes above mentioned within the time fixed in each of the said decrees, or at any other time, made payment of the sums decreed as aforesaid, or any part thereof; and

Whereas, by the decree and order of the Circuit Court of the United States for the District of Colorado in said cause therein pending Silas H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, the parties hereto of the second part, were appointed receivers of the railroad, property and effects of The Union Pacific Railway Company, party of the fourth part hereto; and in and by a decree entered by said United States Circuit Court for the District of Wyoming, in said ancillary cause therein pending the said parties of the second part hereto were appointed

receivers of the railroad, property and effects of said The
6292 Union Pacific Railway Company for and within the territory

and jurisdiction of said court with the powers, responsibilities and duties conferred upon them by said decree and order entered by said Circuit Court of the United States for the District of Colorado appointing such receivers; and

Whereas, William D. Cornish, the party of the first part hereto, was, in and by the said decree of the Circuit Court of the United States for the District of Colorado, and in and by said ancillary decree of the United States Circuit Court for the District of Wyoming, appointed Special Master to execute said decrees and make the sale therein provided to be made, and to execute and deliver deeds of conveyance to the purchaser or purchasers thereof upon confirmation of such sale and payment of the purchase price thereof as in said decrees provided; and

Whereas, said William D. Cornish, Special Master as aforesaid, gave due public notice, in pursuance of said decrees and according to law, of the time and place of the sale under said decrees and of the manner and terms upon which such sale was to be conducted, and duly complied with all the provisions of said decrees relating to such sale; and in pursuance of said decrees, at the place specified therein, to wit, at the front door of the Court House of the County of Arapahoe, in the City of Denver, in the State of Colorado, did, on the 21st day of February, 1898, offer for sale said mortgaged premises, property and franchises in three separate parcels as defined in said decrees and as therein required, and noted the highest bid made for each of said parcels so offered separately, and the said highest bids so noted for said parcels amounting in the aggregate to less than the debt secured by said First Mortgage as in said decrees found, said Special Master did thereupon proceed to
6293 offer the entire mortgaged premises for sale in one lot or parcel as required by said decrees, being all of the said properties theretofore so separately offered by him, and the highest sum bid for said mortgaged premises as an entirety exceeding the aggregate amount of the highest separate bids made for said premises as offered in parcels said Special Master accepted the said bid for said mortgaged premises as an entirety and did duly sell at public auction to Alvin W. Krech and Lawrence Greer, the parties of the fifth part to this indenture, they being the highest and best bidders at said sale, all the property in and by said decrees directed to be sold, including all and singular the railroad, telegraph, franchises, rolling stock, lands, land grants and all property covered by and embraced in said First Mortgage and all the lands and property in the hands of the trustees under said First Mortgage, held by them subject to the lien created by said First Mortgage, in the said decrees, mentioned and directed to be sold, at and for the sum of $2,000,000; and

Whereas, afterwards, William D. Cornish, Special Master as aforesaid, did duly make and file his report of said sale to the said courts, and by decrees entered by said Circuit Courts of the United States in said causes therein pending respectively, the said report of sale was in all things ratified, approved and confirmed and the sale therein

reported made absolute, subject to all the terms and conditions of said decrees of foreclosure and sale and to the due performance by the purchasers or their successors or assigns of all the obligations therein prescribed; and

Whereas, said Alvin W. Krech and Lawrence Greer, the parties of the fifth part hereto, have in all respects complied with the
6294 provisions of the said decrees of foreclosure and sale and have paid and made settlement of the purchase price as provided in said decrees and the orders of said Courts; and

Whereas, said Alvin W. Krech and Lawrence Greer, have duly sold, assigned, transferred and set over to Union Pacific Railroad Company, the party of the sixth part to this Indenture, their said bid and their right to receive conveyance of the railroad, lands, land grants, franchises and other property purchased and all their other rights under the said decrees and by virtue of their bid and purchase at said sale;

Now, therefore, this indenture witnesseth, that the said William D. Cornish, Special Master as aforesaid, party of the first part to these presents, in order to carry into effect the sale made by him as aforesaid, and in pursuance of the aforesaid decrees, and in conformity to law, and in consideration of the premises, and of the payment and settlement as aforesaid of the said purchase price of the said property as provided in that behalf in the said decrees and orders of said courts, has granted, bargained, sold, assigned, released, conveyed and confirmed, and by these presents, does grant, bargain, sell, assign, release, convey and confirm unto the said Union Pacific Railroad Company, the party of the sixth part hereto, and to its successors and assigns, in fee simple forever, all and singular all the railroad, telegraph, franchises, rights, functions, immunities and appurtenances to the same belonging, rolling stock, lands, land grants and property of every kind and description mentioned in the said decrees and embraced in and covered by the said First Mortgage, and all the property sold or directed by the said decrees to be sold.
6295 the same being described as follows:

All and singular the railroad, right of way and telegraph line and railroad property now or at the date of the execution of said First Mortgage, to wit: the 10th day of August, 1869, or at any time since, owned or acquired by said Denver Pacific Railway and Telegraph Company or its successor, the said The Union Pacific Railway Company, extending from Denver, in the State of Colorado, to the junction with the Union Division of The Union Pacific Railway Company at Cheyenne, in the State of Wyoming, and also all the lands, tenements and hereditaments then acquired or appropriated, or which were thereafter acquired or appropriated, either by the Denver Pacific Railway and Telegraph Company or its successor, The Union Pacific Railway Company for the purpose of right of way of said railway, and all the easements and appurtenances thereunto belonging, or in anywise appertaining, and all the

railways, ways and rights of way, depot grounds, tracks, bridges, viaducts, culverts, fences and other structures, depots, station houses, engine houses, car houses, freight houses, wood houses, warehouses, machine shops, workshops, superstructures, erections and fixtures acquired by either the Denver Pacific Railway and Telegraph Company or its successor, The Union Pacific Railway Company, or the Receivers of the said The Union Pacific Railway Company, for the use of said railway, or in connection therewith, or of the business thereof, and all lands, terminals, terminal properties and facilities, and also buildings and other things incident or appurtenant to said railway, terminals and terminal property, situated and being in the City of Denver, in the State of Colorado, or elsewhere, which the said Denver Pacific Railway and Telegraph Company
6296 owned, or which it or its successor, The Union Pacific Railway Company or its said Receivers, have purchased or acquired for the operation and maintenance of said railway or for use in connection with or for the purposes of said railway or any part thereof, or for the business of the said The Union Pacific Railway Company, and also all and singular the franchises originally or subsequently owned, possessed or acquired by the Denver Pacific Railway and Telegraph Company or by its successor, The Union Pacific Railway Company, for the purpose of maintaining and operating said railway between said points and to be a corporation, and all the title and interest of the said Denver Pacific Railway and Telegraph Company and its successor, The Union Pacific Railway Company, and its Receivers in said premises, and all the locomotives, tenders, cars, rolling-stock and other equipment, including Pullman sleeping cars, and all rails, ties, chairs and machinery tools and implements, fuel and materials whatsoever, for or in respect of the construction, operation or repairing or replacing the said railway or any part thereof, or convenient or necessary for the purposes thereof, which the said Denver Pacific Railway and Telegraph Company owned, or its successor, The Union Pacific Railway Company, or the Receivers thereof have purchased or acquired, and all and singular the tenements, incomes and advantages, easements, hereditaments and appurtenances to the said lands, railroad, premises or property belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, income, rents, issues and profits, also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, present or prospective of the said Denver Pacific Railway and Tele-
6297 graph Company, and its successor, The Union Pacific Railway Company of, in and to the same and every part thereof, and all the locomotives, cars, carriages and rolling stock of every description, acquired by the Denver Pacific Railway and Telegraph Company, The Union Pacific Railway Company and its Receivers for use upon or in connection with the operation of said mortgaged premises necessary to the running and operating the same, being an undivided five per centum of all the locomotives, cars, carriages, roll-

ing stock and equipment now owned or used by The Union Pacific Railway Company, including to the extent of five per centum thereof, the interest of The Union Pacific Railway Company and its Receivers, in all of the locomotives, cars, carriages and equipment embraced and included in the Equipment Trust Indenture of The Union Pacific Railway Company to the American Loan and Trust Company of Boston, dated October 1st, 1887; also all furniture, fixtures, appliances, apparatus, supplies and material in the various offices of said railway company upon or remote from said line of railway, including the principal offices of said company in Omaha and Boston, owned or acquired or provided for use in connection with said mortgaged premises; also the rights and property of the character as above described, owned or provided for the common use of the several divisions of said Railway Company's property to the extent of the proportionate use and devotion thereof to the business and concerns of said mortgaged property; also all the right, title, interest, claim or demand whatsoever which the said Denver Pacific Railway and Telegraph Company had or was entitled to or which it might at any time acquire or become entitled to, or which its successor The Union Pacific Railway Company now has or is entitled to or
6298 may hereafter acquire or become entitled to, of, in or to all those lands or sections of land and each and every part of them granted or to be granted under and by virtue of the various Acts of Congress of the United States of America in aid of, or for, or by reason, or in respect of the construction of said line of railway from Denver, in the State of Colorado, to the junction with the Union Pacific Railroad in Cheyenne, in the State of Wyoming, being a distance of about 106 miles, being twenty sections of land on each and every mile of said railway up to and including the full extent of 800,000 acres of such lands which have not been duly conveyed by the said Denver Pacific Railway and Telegraph Company, or its successor The Union Pacific Railway Company, or conveyed by the said Trustees under the power reserved in said First Mortgage, and also all the lands to which the said Denver Pacific Railway and Telegraph Company or its successor The Union Pacific Railway Company was or is entitled under said Acts of Congress to receive from the United States, and which lands have not been certified or patented to said Railway Companies or either of them under said Acts of Congress, and all the land contracts and bills receivable and proceeds arising from the same now outstanding and existing for or with respect to the disposal of any of said lands either by said Denver Pacific Railway and Telegraph Company or its successor The Union Pacific Railway Company or by said Trustees; also the rights and interest of said The Union Pacific Railway Company in or to property of every kind and nature, whether of the character as hereinbefore described or otherwise, owned, acquired or provided for the use of said mortgaged property; also the corporate rights and franchises of said The Union Pacific Railway Company so far as
6299 they pertain to said mortgaged property, and also the money,

credits and property, not herein otherwise specified, in the possession of the Receivers or to which they are or may be entitled which have been or may be derived by said Receivers from or on account of the property of The Union Pacific Railway Company pertaining to the said mortgaged property or from the sale or other disposition of any of said property or from the use of the same or from the operation thereof by said Receivers, subject to the charges of said Receivers in respect thereto; said terminal lands above referred to and the said lands above referred to as owned by the said Denver Pacific Railway and Telegraph Company or by the said The Union Pacific Railway Company which were granted by the United States of America to aid in the construction of said line of railroad and telegraph and which are herein and hereby conveyed unto the party of the sixth part hereto, are more particularly described as follows:

The following described land, situated in the City of Denver, County of Arapahoe, State of Colorado, title to which stands in the name of The Union Pacific Railway Company:

All that portion of Lot 3, that is within the Congressional Grant and all of Lots 4, 5, 6, 7, 8, 9, 10 & 11 in Block "D" in the East Division of the City of Denver ..... 0.62 acres

All of Lots 1, 2, 3, and 4 (reserved) in Block 4 in Gaston's Addition to the City of Denver ..... 1.41 acres

All of Lots 1, 2, 3, 4 and that part of Lot 5 in Block 5 in Gaston's Addition, described as follows: Commencing at the west corner of said lot 5, being also on the southeast line of Wewatta
6300 Street; thence southeasterly along the southwest line of said Lot 5, 97 feet; thence northeasterly at right angles to said last mentioned line 30 feet to a point; thence southeasterly at right angles to said last mentioned line 150 feet to a point; thence northeasterly at right angles to said last mentioned line 20 feet to the East corner of said lot 5; thence northwesterly at right angles to said last mentioned line and along the northeast line of said lot 5 to north corner of same; thence southwesterly along the southeast line of Wewatta Street to point of commencement ..... 1.21 acres

All that portion of Fulton Street, reserved, 40 feet in width, lying directly southeasterly of aforesaid blocks 4 and 5 and between said Blocks 4 and 5 and the railroad lands; also commencing at the west corner of Lot 5 in Block 5 aforesaid, being also on the southeast line of Wewatta Street; thence southeasterly along the southwest line of said Lot 5, 247 feet to point of beginning; thence northeasterly at right angles to said last mentioned line 30 feet; thence southeasterly at right angles to last mentioned line 19 feet to a point on the southeast line of Fulton Street, and also on the northwest line of the Right of Way of the U. P. Ry. Co.; thence southwesterly at right angles to said last mentioned line and along the said northwest line of said Right
6301 of Way of the U. P. Ry. Co. 255 feet to a point; thence northwesterly at right angles to said last mentioned line 19 feet to a point; thence northeasterly at right angles to said last mentioned line 225 feet to the place of beginning ..... 0.67 acres

All that portion of the North half of the southwest quarter of section 27, described as follows:

Commencing at a point where the northwest line of Wynkoop Street, produced, would, if so produced intersect with the south line of the north half of the southwest quarter of said Section 27; running thence northeasterly along said line of Wynkoop

Street produced to a point 990 feet west of the East line of the north half of the southwest quarter of said Section; thence North 0° 06′ West to a point 428.7 feet southerly from the southeast corner of Garden Addition; thence south 48° 09′ W. on a line 50 feet from and parallel to incoming Denver Pacific track 30.3 feet; thence on a curve to the right, radius 1,096.3 feet parallel with and 50 feet from said track 301.5 feet; thence S. 63° 45′ W. 389 feet to the East line of Vanderlip property; thence south to the south line of the north half of the southwest quarter of said section; thence East to place of beginning ---------- 2.30 acres

6302 Also commencing at a point on the North line of the south half of the southwest quarter of said Section 27, 14.1 feet East of the point where the southeast line of Wewatta Street intersects the said North line on the south boundary line of what is known as the "Vanderlip Tract;" running thence east 161.45 feet to the southeast corner of said Vanderlip tract; thence North 158.9 feet to a point on a line running parallel with the south line of said Wewatta Street extended and 10 feet distant in a southeast direction from said southeast line of said Wewatta Street, so extended; thence southwesterly and parallel with the said extended line of Wewatta Street 229 feet to the place of beginning---------- 0.31 acres

Also beginning at a point in the East line of the Vanderlip tract 445.44 feet north of the south line of the north half of the southwest quarter of said Section 27, measured along said East line; thence S. 20° 50′ W. 191.7 feet; thence southwesterly in curved line to the right with a radius of 994.1 feet, 115.2 feet; thence northeasterly parallel with the west line of Wewatta Street, produced, 164.03 feet to the said East line of Vanderlip's land; thence northerly in said east line of Vanderlip's land 167.8 feet to place of beginning---------- 0.21 acres

6303 Also beginning at a point in the South line of the north half of the southwest quarter of said Section 27, 57.91 feet east of the intersection with the West line of Wewatta Street; thence east 69.34 feet; thence northeasterly parallel with the center line of said Wewatta Street produced 231.13 feet to the east boundary line of the Vanderlip tract; thence north in said east boundary line 113.68 feet; thence southwesterly parallel with said center line of Wewatta Street produced 164.03 feet; thence southwesterly in a curved line to the right with a radius of 973.4 feet, 136 feet to a point 64.40 feet northeasterly from the point of beginning, measured parallel with the center line of Wewatta Street, produced 164.03 feet; thence southwesterly in a curved line to the right with a radius of 973.4 feet, 136 feet to a point 64.40 feet northeasterly from the point of beginning measured parallel with the center line of Wewatta Street; thence southwesterly in a straight line 64.40 feet to the point of beginning---------- 0.46 acres

The southwest quarter of the northeast quarter of Section 23, excepting 4 acres heretofore conveyed to Mary Twining and excepting Right of Way heretofore conveyed to the D. P. Ry. & Tel. Co. 33.65 acres

A strip of land 50 feet in width, being 25 feet on either side of the center line of the Railroad track to the Union Stock Yards
6304 across part of the north half of the northwest quarter of Section 23 and south half of the southwest quarter of Section 14, extending from the Right of Way of the "Colorado Central Cut-off" in said section 23 to the end of the center line of said Railroad track at Station 23+50 in section 14---------- 3.05 acres

All the following described lands situated in said City of Denver, County of Arapahoe, State of Colorado, title to which stands in the name of the Denver Pacific Railway and Telegraph Company:

A strip of land for Right of Way, 100 feet in width across the northeast quarter of the southwest quarter of Section 23---------- 2.29 acres

A strip of land for Right of Way, 100 feet in width, across the northwest quarter of the southeast quarter of Section 23------- 1.97 acres

A strip of land, 50 feet wide on each side of the center line of Railway across the southwest quarter of the northeast quarter of Section 23 ---------- 2.35 acres

A strip of land 50 feet wide on each side of the centre line of railway across the east half of the northeast quarter of Section 23 -- 4.30 acres

A strip of land 50 feet wide on each side of the centre line of railway across the northwest quarter of the northwest quarter of section 24 ---------- 1.50 acres

All the above in Township 3 south, in range 68 west.

The following described lands situated in said City of Denver, County of Arapahoe, State of Colorado, title to which stands in the names of James G. Harris and Oliver W. Mink, Trustees:

6305 Commencing at the northwest corner of the grounds commonly called the "Fair Ground" belonging to the "Colorado Agricultural Society;" running thence west a distance of 830 feet; thence north one-quarter of a mile to the East and West Center line of section 23; thence east to center of section; thence south one-quarter of a mile to place of beginning, excepting therefrom a strip of land 100 feet wide as Right of Way for the Denver Pacific Railway and Telegraph Company ---------- 22.46 acres

The north half of the southeast quarter of Section 23, saving and excepting therefrom the Right of Way granted to the Denver Pacific Railway and Telegraph Company, 100 feet in width, and also saving and excepting a strip of land 40 feet wide off the south side of above grounds, described as follows:

Commencing at a point on the south line of the north half of the southwest quarter of section twenty-three, Town 3 south of Range 68 W. where said south line is intersected by the northwest line of Blake Street in the City of Denver; thence northeasterly on said northwesterly line of Blake Street produced, 56½ feet to a point, which is 40 feet north of said south line of north half of southwest quarter Section 23; thence east on a line 40 feet north of and parallel with said south line of north half of
6306 southwest quarter and parallel to and 40 feet north of the south line of the north ½ of the southeast quarter of said section 3,080.8 feet to the east line of said section 23; thence south on the east line of said section, 40 feet to the southeast corner of the north half of the southeast quarter of said section; thence west on the south line of said north half of southeast quarter and upon the south line of said north half of southwest quarter, 3,117.3 feet to the place of beginning ---------- 75.61 acres

The following described lands situated in said City of Denver, County of Arapahoe, State of Colorado, title to which stands in the name of Jay Gould and Russell Sage, Trustees:

Lots 4, 5, 6, 7 and 8 in Block 7 in Gaston's Addition to the City of Denver ---------- 0.74 acres

All that portion of "Fulton Street reserved" lying directly southeast of said Lots 4, 5, 6, 7 and 8 in Block 7 and between said lots and railroad lands and connecting said railroad lands with said lots ---------- 0.20 acres

Also the following described lands, situated in said City of Denver, County of Arapahoe, State of Colorado, in which the Kansas Pacific Railway Company and the Denver Pacific Railway Company formerly had each an undivided half interest:

All of Block numbered or marked "C" in the East Division of the City of Denver ---------- 1.04 acres

Commencing at the corners of Sections 27, 28, 33 and 34, T. 3
6307 S. R. 68 W.; thence N 15 W. 76.3 feet to the intersection with a continuation of the northwest line of Wynkoop

Street; thence northeast along a continuation of said northwest line of Wynkoop Street to its intersection with the north line of the south half of the southwest quarter of said Section 27, 1,773 feet; thence east along said north line 490 feet to the intersection of the continuation of the northwest line of Wazee Street; thence southwest along said continuation of the northwest line of Wazee Street 810 feet to its intersection with a continuation of the southwest line of 22nd Street; thence southeast along said continuation of the southwest line of 22nd Street, 205 feet to the northwest line of the alley in the rear of Blake Street; thence southwest along said line of said alley 400 feet to its intersection with a continuation of the northeast line of 21st Street; thence northwest along said continuation of the northeast line of 21st Street to its intersection with a continuation of the northwest line of Wazee Street, 205 feet; thence southwest along said continuation of the northwest line of Wazee Street to its intersection with the south line of Section 27, 672 feet; thence westerly along said line 400 feet to the place of beginning---------- 16.62 acres

Beginning at a stone monument in the center of section 27; thence north along the north and south center line of said Section 27 to a point 662.7 feet south from the northwest corner of the
6308 southwest quarter of the northeast quarter of said section; thence in a straight line northeasterly to a point in the north line of said southwest quarter of the northeast quarter of said section 27, 436.5 feet east of the northwest corner of said southwest quarter of the northeast quarter of Section 27; thence east along the north line of said southwest quarter of the northeast quarter to the northeast corner thereof, being the point of intersection with the southeasterly line of Wynkoop Street; thence northeasterly along said southeasterly line of Wynkoop Street to its intersection with the southwest line of 35th Street; thence southeasterly along said southwest line of 35th Street to a point 280 feet northwesterly from the northwesterly line of Blake Street; said point being 338½ feet South 61° 20' E. from the corner between sections 22, 23, 26 and 27; thence N 48° 31' E. 106 ft.; thence N 51° 16' E. 103.3 ft.; thence N 52° 04' E. 100 f.; thence N 50° 20' E. 96.6 ft.; thence N 48° E. 59.2 ft.; thence N 46° E. 97.4 feet; thence N 45° 20' E. 1570 feet; to a point in the north line of the south half of the southwest quarter of said section 23; thence east along said north line of south half of the southwest quarter, 141.4 feet; thence S 45° 20' W. 1,627½ feet;
6309 thence S 45° 41' W. 101 ft.; thence S 47° 53' W. 101.8 feet; thence S 50° 25' W. 101 ft.; thence S 51° 54' 100.3 ft.; thence S 51° 19' W. 99 feet; thence S 48° 26' W. 98 feet, to a point 180 feet distant northwesterly from the northwesterly line of Blake Street; thence southwesterly parallel with said Blake Street to a point in the North and South centre line of section 27 aforesaid; thence north along said north and south centre line section 27 to a point 125 feet distant from said last mentioned line and being 305 feet distant northwesterly from the northwesterly line of Blake Street; thence northeasterly parallel with said Blake Street to a point in the East and West centre line of said section 27; thence west along said center line 449.5 feet more or less to point of beginning---------- 59.49 acres

The following described lands, situated in said City of Denver, County of Arapahoe, State of Colorado, title to which stands in the name of F. Gordon Dexter, Edwin F. Atkins and Gardner M. Lane, Trustees:

Beginning at the center of section 27; running thence southwesterly in a straight line to the point where the northwesterly line of Wynkoop Street, extended, intersects the north line of the southwest quarter of the southwest quarter of said section 27; thence East along the north line of said southwest
6310 quarter of the southwest quarter to a point where the northwest line of Wazee Street, extended, would intersect

said north line of the southeast quarter of the southwest quarter; thence with said northwest line of Wazee Street extended, northeasterly to a point where said line of Wazee Street, extended, intersects the southeast line of the Right of Way of the Denver Pacific Railway; thence with said southeast line of said Right of Way to a point in the north and south center line of said section 27; which is 180 feet northwesterly from the northwest line of Blake Street; thence north along said North and south center line to a point 205 feet northwesterly from said northwesterly line of Blake Street; thence northeasterly 205 feet from and parallel with said Blake Street to a point in the East and west center line of section 27 aforesaid; thence west along said east and west center line section 27 to place of beginning---------- 15.46 acres

Also the following described land situated in County of Arapahoe, State of Colorado:

North half and southwest quarter of section 5, west half of section 7, all in Township 1 south, Range 64 west of the sixth principal meridian.

All of sections 3, 5, 9, and 11, south half of section 15, all of sections 17, 19 & 21, north half & southeast quarter of section 29, all in Township 1 south, Range 65 west of the sixth principal meridian.

6311 All of sections 1 and 3, southwest quarter of section 17, northwest quarter of section 21, all of sections 25, 27, 29, 31, 33 and 35, all in Township 1 south, Range 66 west of the sixth principal meridian.

West half of section 1, all of sections 3, 7 and 9, northwest quarter of section 11, northwest quarter of section 17, all in Township 2 south, Range 66 west of the sixth principal meridian.

All of section 17, north half of northwest quarter & southwest quarter of northwest quarter of section 27, northeast quarter & northwest quarter of section 29, all of section 31, northeast quarter of section 33, all in Township 1 south, Range 67 west of the sixth principal meridian.

All of sections 1 and 3, northeast quarter & southeast quarter & east half of northwest quarter & east half of southwest quarter of section 5, south half of northeast quarter & northwest quarter of northwest quarter & south half of northwest quarter & south half of section 7, all of sections 9, 11, 15, 17 and 19, northwest quarter of 27, all of section 29; northwest quarter of section 31 & northwest quarter of section 33, all in Township 1 south, Range 68 west of the sixth principal meridian.

Southwest quarter of northeast quarter, north half of southeast quarter & northeast quarter of southwest quarter of section 13, northeast quarter of section 25, all in Township 1 south, Range 67 west of the sixth principal meridian.

Southwest quarter of the southwest quarter of section 31, in Township 2 south, Range 67 west of the sixth principal meridian.

South half of northwest quarter & north half of southwest quarter of section 35, in Township 2 south, Range 68 west of the
6312 sixth principal meridian.

West half of northwest quarter of section 7, in Township 3, Range 68 west of the sixth principal meridian.

All the lands situated in the County of Jefferson, State of Colorado, which are described as follows:

Southeast quarter of section 29, in Township 2 south, Range 69 west of the sixth principal meridian.

West half of southwest quarter of section 21, northeast quarter of southeast quarter & east half of northeast quarter of section 33, all in Township 2 south, Range 70 west of the sixth principal meridian.

Northeast quarter of northeast quarter of section 5, Lot 2 in northeast quarter, northwest quarter, southeast quarter & southwest quarter of section 7, northeast quarter of northeast quarter of section 9, lots 3 & 4 & part of southeast quarter of section 17, northeast quarter of northeast quarter, west half of northeast quarter, northwest quarter, southwest quarter of southwest quarter & west half of southeast quarter of section 19, north half, northeast quarter of southeast quarter, west half of southeast quarter of section 31, northeast quarter of section 35, all in Township 3 south, Range 70 west of the sixth principal meridian.

Southeast quarter of southeast quarter of section 7, north half & southeast quarter of section 21, north half and southwest quarter of section 27, northeast quarter of southeast quarter & southeast quarter of northeast quarter & west half of southeast quarter & southeast quarter of southeast quarter of section 29, and all of section 31, all in Township 4 south, Range 70 west of the sixth principal meridian.

6313 North half and southwest quarter of section 3, all of section 5, northeast quarter of northwest quarter, west half of northwest quarter & south half of section 7, north half of section 9 & north half of section 17, all in Township 5 south, Range 70 west of the sixth principal meridian.

West half of section 1, all of section 11, northwest quarter & southwest quarter of section 13, all of section 15, east half of section 21, southeast quarter & southwest quarter of section 23, all of section 25, north half & southwest quarter of section 27, northeast quarter & northwest quarter & south half of section 33, northeast quarter & south half of northwest quarter & southeast quarter of section 35, all in Township 2 south, Range 71 west of the sixth principal meridian.

All of section 3, east half of section 5, all of section 9, north half of northeast quarter, northwest quarter & southwest quarter of section 11, northeast quarter & northwest quarter of section 13, north half & east half of southeast quarter of section 15, east half of section 17, north half & west half of southeast quarter of section 21, north half of southeast quarter & southwest quarter of southwest quarter of section 23, northeast quarter, east half of northwest quarter, north half of southeast quarter, southeast quarter of southeast quarter & southwest quarter of section 27, southeast quarter of northeast quarter & northwest quarter of section 29, north half, north half of southeast

quarter & north half of southwest quarter of section 33, all in Township 3 south, Range 71 west of the sixth principal meridian.

South half of northeast quarter, south half of northwest quarter & south half of section 3, south half of section 5, north-
6314 east quarter of northeast quarter of section 7, north half, north half of southeast quarter & north half of southwest quarter of section 9, northwest quarter of section 11, south half of northwest quarter, south half of southeast quarter & southeast quarter of southwest quarter of section 13, southwest quarter of section 15, northwest quarter of section 21, northeast quarter, southeast quarter & west half of southwest quarter of section 23, all of section 25, east half of northeast quarter, southwest quarter of northeast quarter & southeast quarter of section 27, northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter of section 33, north half & north half of southwest quarter of section 35, all in Township 4 south, Range 71 west of the sixth principal meridian.

All of section 1; south half of north half & south half of section 3, north half of southeast quarter of section 9, northeast quarter & south half of section 11, north half & northwest quarter of southeast quarter & southwest quarter of section 13, northeast quarter, south half, northeast quarter of northwest quarter & south half of northwest quarter of section 15, northeast quarter, east half of northwest quarter, west half of northwest quarter, southeast quarter, east half of southwest quarter & west half of southwest quarter of section 23, northeast quarter of section 27, all in Township 5 south, Range 71 west of the sixth principal meridian.

East half of southwest quarter & southwest quarter of southwest quarter of section 1, in Township 3 south, Range 69 west of the sixth principal meridian.

Northwest quarter of section 15 in Township 4 south, Range 69 west of the sixth principal meridian.

6315 West half of northeast quarter & east half of the northwest quarter of section 5 in Township 2 south, Range 70 west of the sixth principal meridian.

Northwest quarter of the southeast quarter of section 3, East half of northwest quarter & northwest quarter of northwest quarter of section 11, all in Township 3 south, Range 70 west of the sixth principal meridian.

West half of northeast quarter of section 3, in Township 4 south, Range 70 west of the sixth principal meridian.

East half of the southeast quarter of section 13 in Township 3 south, Range 71 west of the sixth principal meridian.

North half of the Northwest quarter of section 13 in Township 4 south, Range 71 west of the sixth principal meridian.

All the lands situated in the County of Boulder, State of Colorado, which are described as follows:

Southwest quarter of section 1, east half of southeast quarter, southwest quarter of southeast quarter, & south half of southwest quarter of section 11, northwest quarter & south half of section 31,

all in Township 1 south, Range 69 west of the sixth principal meridian.

All of section 5, north half of section 7, southeast quarter of section 13 (except 20 acres deeded January 14, 1881, townsite of Northrup), northeast quarter of section 23, northwest quarter & southwest quarter of section 25, northwest quarter & southwest quarter of section 35, (except 1 acre deeded for school site, December 23, 1891, & 5 acres deeded for cemetery, February 9, 1892), all in Township 1, north, Range 69 west of the sixth principal meridian.

6316 South half of northeast quarter of section 15, south half of section 23, south half of northwest quarter of section 29, south half of section 31, southwest quarter of section 33, all in Township 2 north, Range 69 west of the sixth principal meridian.

Northeast quarter & southwest quarter of section 1, southeast quarter of section 3, southeast quarter of section 11, east half of section 3, southwest quarter of southeast quarter & southwest quarter of section 15, all in Township 3 north, Range 69 west of the sixth principal meridian.

Northwest quarter of section 13, southwest quarter of section 13 (except 7.20 acres quitclaimed October 3, 1885, to Denver, Marshall & Boulder Ry. Co., & 4.44 acres quitclaimed to Community Ditch and Reservoir Co., December 26, 1885), north half of section 23 (except 4.52 acres quitclaimed to Community Ditch & Reservoir Co., December 26, 1885), & north half of section 27, all in Township 1 south, Range 70 west of the sixth principal meridian.

Northeast quarter & southeast quarter & southwest quarter of section 1, in Township 1 north, Range 70 west of the sixth principal meridian.

East half of section 11, in Township 3 north, Range 70 west of the sixth principal meridian.

Northeast quarter & south half of section 25 & east half of section 35, all in Township 1 south, range 71 west of the sixth principal meridian.

Northwest quarter & southwest quarter of section 7, south half of northeast quarter of section 13, southeast quarter of section 15, southwest quarter of section 21, northwest quarter of section 27, west half of southeast quarter of section 21, northeast quarter of

6317 northwest quarter & west half of northwest quarter of section 29, all in Township 2 north, Range 69 west of the sixth principal meridian.

Southwest quarter of section 1, northwest quarter & west half of southwest quarter of section 9, & northeast quarter of southeast quarter of section 17, all in Township 1 south, Range 70 west of the sixth principal meridian.

All the lands situated in the County of Larimer, State of Colorado, which are described as follows:

All of sections 1 & 3, northeast quarter & south half of section 5, north half of section 9, all of section 11, & west half of section

25, all in Township 5 north, Range 68 west of the sixth principal meridian.

West half of section 7, all of section 15, southeast quarter of section 17, northwest quarter & southeast quarter of section 19, all of section 21, all of section 23 (except 1 acre deeded School District #52, July 22, 1889), north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter & south half of section 25, all of section 27, north half & southeast quarter of section 29, northwest quarter of section 31, all of sections 33 and 35, all in Township 6 north, Range 68 west of the sixth principal meridian.

All of sections 1, 7, 11, 13, 23 & 29 in Township 8 north, Range 68 west of the sixth principal meridian.

All of sections 1, 3, 5, 9, 11, 13, 21, 23, 25, 27 & 35 in Township 9 north, Range 68 west of the sixth principal meridian.

All of sections 31 & 33 & south half of section 35, all in Township 10 north, Range 68 west of the sixth principal meridian.

6318 North half & southeast quarter of section 3, southwest quarter of section 5, northeast quarter & northwest quarter of section 9 & northwest quarter of section 29, all in Township 4 north, Range 69 west of the sixth principal meridian.

Northeast quarter of section 31 in Township 5 north, Range 69 west of the sixth principal meridian.

Northeast quarter of section 23, & northwest quarter of section 25, in Township 6 north, Range 69 west of the sixth principal meridian.

Northeast quarter & south half of section 7, all of sections 11, 17, and 23, all of section 25 (except 61 acres deeded February 10, 1897, to Larimer & Weld Reservoir Co., being part of west half of southwest quarter & southwest quarter of northwest quarter), north half of northeast quarter & north half of northwest quarter of section 29, all in Township 8 north, Range 69 west of the sixth principal meridian.

All of sections 1, 3, 11, 19, 25, 29 & 31 in Township 9 north, Range 69 west of the sixth principal meridian.

Southwest quarter of section 27, south half of section 29, all of sections 31, 33 & 35, all in Township 10 north, Range 69 west of the sixth principal meridian.

Southwest quarter of section 13 in Township 4 north, Range 70 west of the sixth principal meridian.

All of section 1, southeast quarter & north half of section 3, all of sections 11 & 13, and east half of section 23, all in Township 9 north, Range 70 west of the sixth principal meridian.

South half of section 27, & all of section 35, all in Township 10 north, Range 70 west of the sixth principal meridian.

6319 The following described lands situated in Weld County, State of Colorado:

The north half and southwest quarter of section 5, and all of section 7, and the northwest quarter of section 19, all in Township 3 north, in Range 62 west of the sixth principal meridian.

The northwest quarter of section 3, and all of section 5, and the northeast quarter and the east half of the northwest quarter and the northwest quarter of the northwest quarter and the southeast quarter of section 7, and the east half of the southwest quarter of section 7, (less 3.11 acres conveyed to Colorado Central Railroad Company, May 13, 1886), and all of section 9, and the northeast quarter of the Northeast quarter and the south half of the northwest quarter of section 7, and the south half of section 17, (except 4.10 acres to Irrig. Ditch, March 28, 1889), and all of section 19, and the west half of section 21, and all of sections 29 and 31, and the northwest quarter of section 33, all in Township 4 north, in Range 62 west of the sixth principal meridian.

The west half of the east half and the west half of section 3, and all of sections 5, 7 and 9, and the west half of the east half and the west half of section 15, and all of sections 17, 19 and 21, and the west half of the east half and the west half of section 27, and all of sections 29, 31 and 33, all in Township 5 north, in Range 62 west of the sixth principal meridian.

All of sections 5, 7 and 9, and the west half of section 15, and all of sections 17, 19 and 21, and the west half of section 27, and all of sections 29, 31 and 33, all in Township 6 north, in Range 62 west of the sixth principal meridian.

6320 Part of northwest quarter of section 5, except 120 acres condemned for reservoir site, Weld County, Colorado, in March, 1892, and the south half of section 5, and all of sections 7, 17 and 19, and the west half of section 21, and all of sections 29 and 31, and the west half and southeast quarter of section 33, all in Township 7 north, in Range 62 west of the sixth principal meridian.

All of section 19, and the southwest quarter of section 29, and all of section 31, all in Township 8 north, in Range 62 west of the sixth principal meridian.

All of sections 5, 7 and 9, and the west half of section 17, and the northwest quarter of section 19, all in Township 1 north, in Range 63 west of the sixth principal meridian.

All of section 3, excepting a strip of land 100 ft. in width, conveyed to Bur. & Colo. R. R. Co., December 27, 1889, through the south half of the section, being 11 acres, more or less, all of section 5, and all of section 9, except a strip of land 100 ft. in width, conveyed to Bur. & Colo. R. R. Co., December 27, 1889, through the northwest quarter of said section, being 4.94 acres, more or less, and all of section 17, except a strip of land 100 ft. in width, conveyed to Bur. & Colo. R. R. Co., December 27, 1889, through the northwest quarter of said section, being 4.94 acres, more or less, and all of sections 21, 29, 31 and 33, all in Township 2 north, in Range 63 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 27, 29, 33 and 35, all in Township 3 north, in Range 63 west of the sixth principal meridian.

The northeast quarter of section 3 except a strip of land 100 ft. in width conveyed to Colorado Central Railroad Company May 5, 1886, being 5 acres, more or less, and the south half of section 3,
6321 and all of section 5, and the northeast quarter and south half of section 7, and all of section 9, and all of section 11, except a strip of land 100 ft. in width in the northeast quarter of said section, conveyed to Colorado Central Railroad Company May 5, 1886, being 4.21 acres, more or less, and all of sections 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35, all in Township 4 north, in Range 63 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15 and 17, and the south half of the south half of section 19, and all of section 21, except a strip of land 40 ft. in width, conveyed to N. E. Live Stock Co. March 2, 1887, being 1.63 acres, more or less, and all of sections 23, 25 and 27, and all of section 29, except a strip of land 100 ft. in width, containing 12.24 acres, more or less, conveyed to Colorado Central Railroad Company May 5, 1886, and the southeast quarter of section 33, except a strip of land, 100 ft. in width, containing 12.24 acres, more or less, conveyed to Colorado Central Railroad Company May 5, 1886, and the southwest quarter of section 33, and the north half of section 35, all in Township 5 north, in Range 63 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 11, 13, 15, 19, 23, 25, 27, 31, 33 and 35, all in Township 6 north, in Range 63 west of the sixth principal meridian.

The north half and southwest quarter of section 15, and all of section 35, all in Township 7 north, in Range 63 west of the sixth principal meridian.

All of sections 3, 5, 7 and 9, and the west half of section 11, and all of sections 15, 17, 19, 21 and 23, and the west half of the east
6322 half and the west half of section 25, and all of sections 27, 29, 31, 33 and 35, all in Township 9 north, in Range 63 west of the sixth principal meridian.

All of sections 5 and 7 and the west half of section 9, and all of sections 17, 19 and 21, and the west half of section 27, and all of sections 29, 31 and 33, all in Township 10 north, in Range 63 west of the sixth principal meridian.

The west half of section 29, and all of section 31, all in Township 11 north, in Range 63 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21 and 23, and the northwest quarter of section 25, and all of sections 27, 29, 31 and 33, all in Township 1 north, in Range 64 west of the sixth principal meridian.

All of sections 3, 5, 7, 9, 11, 15, 17, 19, 21 and 23, and all of section 25, except a strip of land, 100 ft. in width, containing 6.61 acres, more or less, conveyed to the B. & C. R. R., December 27, 1889, and all of section 27, except a strip of land, 100 ft. in width, containing 6.61 acres, more or less, conveyed to B. & C. R. R. Co., December 27, 1889, and all of section 29, except a strip of land, 100 ft. in width, containing 6.61 acres, more or less, conveyed to the B. & C. R. R.,

December 27, 1889, and all of section 31, except a strip of land, 100 ft. in width, containing 6.61 acres, more or less, conveyed to the B. & C. R. R., December 27, 1889, and all of sections 33 and 35, all in Township 2 north, in Range 64 west of the sixth principal meridian.

All of sections 1, 3, 7, 9, 15 and 17, and the north half and southeast quarter of section 19, and all of sections 21, 23, 27, 29, 31, 33 and 35, all in Township 3 north, in Range 64 west of the sixth principal meridian.

6323 All of section 7, and the east half and southwest quarter of section 13, and all of sections 17 and 19, and the east half of section 23, and all of sections 25, 29, 31, and 35, all in Township 4 north, in Range 64 west of the sixth principal meridian.

The northeast quarter of the northwest quarter and the west half of the northwest quarter of section 7, and the southeast quarter of the southwest quarter of section 9, and the northeast quarter and the south half of the northwest quarter of section 15, and all of section 23, except a strip of land, 100 ft. in width, containing 11.86 acres, more or less, conveyed to Colorado Central Railroad Company, May 5, 1886, and all of sections 29 and 31, and the southwest quarter of section 35, all in Township 5 north, in Range 64 west of the sixth principal meridian.

All of sections 1, 3, 5, 9, 11, 15, 17, 21, 23, 25 and 29, and the north half of section 33, and all of section 35, all in Township 6 north, in Range 64 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35, all in Township 7 north, in Range 64 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35, all in Township 8 north, in Range 64 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35, all in Township 9 north, in Range 64 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35, all in Township 10 north, in Range 64 west of the sixth principal meridian.

6324 All of sections 25 and 35, and the south half of section 33, all in Township 11 north, in Range 64 west of the sixth principal meridian.

All of sections 1, 7, 11, 13, 15, 17, 21, 23, 25, 27, 33 and 35, all in Township 1, north, in Range 65 west of the sixth principal meridian.

All of sections 1, 5, 7, 9, 11, 13, 15, 19, 21, 23, 25, 27, 29, and 33, all in Township 2 north, in Range 65 west of the sixth principal meridian.

All of section 1 and the northeast quarter of section 3, and all of sections 5, 7, 9, 11, 13, 15 and 17 and the east half of section 19, and all of sections 21, 23, 25, 27, 29, 33 and 35, all in Township 3 north, in Range 65 west of the sixth principal meridian.

All of sections 7, 21, 25, 29, 31, 33 and 35, all in Township 4 north, in Range 65 west of the sixth principal meridian.

The north half of section 1, and the east half of section 3, and all of section 11, all in Township 6 north, in Range 65 west of the sixth principal meridian.

All of section 1, and the north half and southwest quarter of section 3, and all of sections 5 and 7, and the southeast quarter of section 11, and all of section 13, and the southwest quarter of section 17, and the east half of section 23, and all of section 25, and the east half of section 27, and the west half of section 29, and all of
6325 section 35, all in Township 7 north, in Range 65 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35, all in Township 8 north, in Range 65 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35, all in Township 9 north, in Range 65 west of the sixth principal meridian.

The south half of section 1, and the south half of section 9, and all of sections 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35, all in Township 10 north, in Range 65 west of the sixth principal meridian.

All of sections 1 and 3, and the east half of section 9, and all of sections 11, 13 and 15 and the northwest quarter of section 17, and all of sections 21, 23, 27, 33 and 35 all in Township 1 north, in Range 66 west of the sixth principal meridian.

All of sections 1 and 3, and the north half and southeast quarter of section 5, and the north half of section 9, and all of sections 11, 13 and 15, and the northwest quarter of section 17, and the northeast quarter of section 21, and all of sections 23, 25 and 27, and the east half of section 33, and all of section 35, all in Township 2 north, in Range 66 west of the sixth principal meridian.

All of sections 1 and 3, and the north half of section 5 and the east half of section 7, and all of sections 9, 11, 13 and 15, and the east half of the northeast quarter of section 19, and all of sections 23, 25, 27 and 29, and the east half, and the east half of the northwest quarter, and the southwest quarter of the northwest
6326 quarter, and the east half of the southwest quarter, of section 31, and all of sections 33 and 35, all in Township 3 north, in Range 66 west of the sixth principal meridian.

The southeast quarter of the northeast quarter, and the south half, of section 1, and the southeast quarter of the northwest quarter, and the southeast quarter, and the east half of the southwest quarter, and the southwest quarter of the southwest quarter of section 3, and the north half of the northeast quarter and the north half of the northwest quarter of section 5, and the northeast quarter of the northeast quarter and the south half of the northeast quarter of section 7, and the north half of the southeast quarter and the north half of the southwest quarter and the southeast quarter of the southwest quarter of section 9, and the northwest quarter and south half of section 11, except a strip of land 50 ft. wide containing 7.60 acres,

more or less, conveyed to Far. Ind. Ditch Co. December 17, 1894, and the north half of section 13, and the southwest quarter of section 13, except 1 acre deeded for school site in May, 1876, and the east half of the southeast quarter of section 17, and the east half of section 19, and all of sections 23 and 27, and all of section 31, except a strip of land, 50 ft. in width, containing 7.75 acres, more or less, condemned for Farmer's Ind. Ditch Co., December 17, 1894, and the north half of section 33, and all of section 35, except a strip of land conveyed to the Platte Valley Irrig. Co., March 30, 1888, all in Township 4 north, in Range 66 west of the sixth principal meridian.

The east half and the southwest quarter of section 3, and the northwest quarter and the south half of section 5, and all of section
6327 7, and the east half of the southeast quarter of section 9, and the north half and the southeast quarter of section 15, and the west half of section 17, and all of section 19, and the southwest quarter of section 21, and the northeast quarter and south half of section 23, and all of section 27, and the east half of section 29, and all of section 31, all in Township 5 north, in Range 66 west of the sixth principal meridian.

The northeast quarter of section 3, and the south half of the southwest quarter of section 33, all in Township 6 north, in Range 66 west of the sixth principal meridian.

All of sections 5, 7 and 19, and the west half of section 27, and the northwest quarter of section 29, and the southwest quarter of section 31, all in Township 7 north, in Range 66 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35, all in Township 8 north, in Range 66 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35, all in Township 9 north, in Range 66 west of the sixth principal meridian.

The south half of sections 13, 15 and 21, and all of sections 23, 25, 27, 29, 31, 33 and 35, all in Township 10 north, in Range 66 west of the sixth principal meridian.

The south half of section 3, and all of section 7, and the west half of section 11, and the north half and southwest quarter of section 15, and all of sections 17 and 19, and the north half and southwest quarter of section 21, and all of sections 27 and 29, and the northwest quarter and southeast quarter of section 35, all in Township 1
6328 north, in Range 67 west of the sixth principal meridian.

The northwest quarter and the north half of the southwest quarter of section 25, and the east half of section 31, and the northeast quarter of section 35, all in Township 2 north, in Range 67 west of the sixth principal meridian.

The northeast quarter of section 1, and the northwest quarter of section 1, except a strip of land, 80 ft. in width, containing 3.30 acres, more or less, condemned for West. Draining & Water Supply Co. in

January, 1895, and the southeast quarter of section 1, except a strip of land, 50 ft. wide, containing 1.15 acres, more or less, for Farmer's Independent Ditch Co., and the north half of the southwest quarter and the southeast quarter of the southwest quarter of section 1, and all of section 5, and the west half of the northwest quarter and the west half of the southwest quarter and the southeast quarter of the southwest quarter of section 11, and the east half of the northeast quarter and the west half of the southeast quarter of section 13, and the northeast quarter of section 15, and the southeast quarter of section 19, and the east half of the east half of section 21, all in Township 3 north, in Range 67 west of the sixth principal meridian.

The north half of section 1, and the northwest quarter and south half of section 5, and the southeast quarter of section 9, and the north half, and the north half of the southwest quarter and the southwest quarter of the southwest quarter of section 13, and all of section 15, and the north half and southeast quarter of section 19, and the southwest quarter of section 19, less 4 acres deeded February 11, 1895,
to Thos. C. Bunyan and all of section 21, and the north half
6329 and the northwest quarter of the southeast quarter and the
southwest quarter of section 23, and the northeast quarter of the northeast quarter of section 25, and the south half of the northeast quarter of section 25, less a strip of land 80 ft. in width, containing 5.10 acres, more or less, deeded to Western Drainage & Water Supply Co. in January, 1895, and the south half of the southeast quarter of section 25, and the southwest quarter of section 25, less a strip of land 80 ft. in width, containing 3.10 acres, more or less, conveyed to Western Drainage & Water Supply Co. in January, 1895, and all of section 29, and the east half and southwest quarter of section 31, all in Township 4 north, in Range 67 west of the sixth principal meridian.

North half & southwest quarter of section 1, all of section 3, northwest quarter & south half of section 5, all of sections 7, 9, 11, 13, 15 & 17, north half & southeast quarter of section 21, all of sections 23 & 25, north half & southwest quarter of section 27, southeast quarter of section 31, southwest quarter of section 35, all in Township 5 north, Range 67 west of the sixth principal meridian.

North half of section 3, west half of southeast quarter & southwest quarter of section 17, southwest quarter of section 19, southwest quarter of section 29, all of section 31, southwest quarter of section 33, south half of southeast quarter of section 35, all in Township 6 north, Range 67 west of the sixth principal meridian.

All of sections 1, 3, 5, 9, 11, & 13 & north half of section 31, all in Township 7 north, Range 67 west of the sixth principal meridian.

6330 All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21 & 23, north half & southwest quarter of section 25, all of sections 27, 29, 31, 33 & 35, all in Township 8 north, Range 67 west of the sixth principal meridian.

All of sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 & 35 in Township 9 north, Range 67 west of the sixth principal meridian.

South half of section 25, south half of section 31, all of sections 33 & 35, all in Township 10 north, Range 67 west of the sixth principal meridian.

North half & southeast quarter of section 1, all of section 3, west half & southeast quarter of section 5, northeast quarter & east half of northwest quarter & east half of southeast quarter of section 7, all of sections 9, 11, 13 & 15, west half of northwest quarter of section 19, all of section 21 (except a strip of land 50 feet wide, conveyed to Community Ditch & Res. Co., September 20, 1886, containing 7.10 acres more or less), all of sections 23 & 25, all of section 27 (except a strip of land 50 feet wide, conveyed to Community Ditch & Res. Co., September 20, 1886, containing 8.80 acres more or less), east half of northeast quarter & west half of northwest quarter & south half of section 29, southeast quarter of southeast quarter & northeast quarter of southwest quarter of section 31, all of section 33 (except a strip of land 50 feet wide, conveyed to Community Ditch & Res. Co. September 20, 1886, containing 8.60 acres more or less), all of section 35, all in Township 1 north, Range 68 west of the sixth principal meridian.

North half of southeast quarter & southeast quarter of southeast quarter of section 1, southeast quarter of southwest quarter of section 9, east half of southwest quarter & southwest quarter of
6331 southwest quarter of section 29 (except a strip of land 100 feet in width, conveyed to Denver, Utah & Pac. R. R., July 1, 1889, containing 5 acres more or less), northeast quarter & south half of section 33, all in Township 2 north, Range 68 west of the sixth principal meridian.

North half & southwest quarter of section 1, northeast quarter & east half of northwest quarter of section 3, northwest quarter of section 5, all of section 7, east half & southwest quarter of section 13, northwest quarter & south half of section 23, all in Township 3 north, Range 68 west of the sixth principal meridian.

West half of section 3, northeast quarter of section 7, East half of section 11, northeast quarter of southeast quarter of section 19, east half of southeast quarter of section 21, all of section 25, southwest quarter of section 29, southeast quarter of section 31, east half of section 33, and all of section 35, all in Township 4 north, Range 68 west of the sixth principal meridian.

West half of southwest quarter of section 31, in Township 5 north, Range 65 west of the sixth principal meridian.

Northwest quarter of section 19, in Township 4 north, Range 66 west of the sixth principal meridian.

South half of southeast quarter of section 35, in Township 6 north, Range 66 west of the sixth principal meridian.

West half of northwest quarter of section 1, in Township 1 north, Range 67 west of the sixth principal meridian.

Southeast quarter of the southeast quarter of section 1, in Township 2 north, Range 67 west of the sixth principal meridian.

East half of southeast quarter of section 9, & southwest quarter of northeast quarter of section 11, in Township 3 north,
6332 Range 67 west of the sixth principal meridian.

Northwest quarter of the northeast quarter & north half of northwest quarter of section 35, in Township 4 north, Range 67 west of the sixth principal meridian.

All the lands situated in the County of Laramie, State of Wyoming, which are described as follows:

Southeast quarter of northeast quarter & southeast quarter of section 7, northwest quarter of section 15, & north half of northeast quarter of section 17, all in Township 5 south, Range 68 west of the sixth principal meridian.

Southeast quarter of section 33, in Township 7 south, Range 68 west of the sixth principal meridian.

Including also in this conveyance to said party of the sixth part any and all other lands, rights of way, depots, stations, buildings and other things incident and appurtenant to the operation of said railway situated in the City of Denver, in the State of Colorado, which have been acquired since the execution of said First Mortgage either by the Denver Pacific Railway and Telegraph Company, or its successor The Union Pacific Railway Company, for the operation and maintenance of said railway.

Excepting, however, any and all property of any description which has been heretofore lawfully released from the lien and operation of said First Mortgage.

It being the true intent and purpose hereof to convey to the party of the sixth part all property and premises directed by the said decrees to be sold whether the same are in this Indenture particularly described or not, subject however to the charges of the Receivers in respect thereof as set forth in said decrees;

6333 To have and to hold all and singular the above mentioned and described railroad, telegraph, rolling stock, lands, land grants, franchises, and property of every kind and description hereby conveyed, or intended to be conveyed, unto the said Union Pacific Railroad Company, party of the sixth part hereto, being the corporation organized and existing under and pursuant to the laws of the State of Utah, and to its successors and assigns forever, as fully and absolutely as the party of the first part may or ought by virtue of the said decrees to convey the same; subject to and saving the right and title of The American Loan and Trust Company, as shown by the Equipment Trust Indenture of The Union Pacific Railway Company to the said The American Loan and Trust Company, Trustee, dated October 1st, 1887, to the extent and so far as the said indenture affects the portion of the equipment therein embraced which is adjudged in said decrees to pertain to said mortgaged premises, and to the extent of the purchase money indebtedness in said decrees found to be outstanding thereunder;

And subject also to the further express condition that the party hereto of the sixth part, its successors or assigns shall, as part consideration and purchase price of the property purchased and herein conveyed, and in addition to the sums required by said decrees to be paid, and paid, take the same, and receive this deed therefor upon the express condition that it or its successors or assigns shall, as provided in said decrees, pay, satisfy and discharge the obligations, liabilities and charges in said several decrees, specified as follows:

First. Any unpaid compensation which has been or shall be allowed by the Court to the Receivers in said causes, or their
6334 solicitors, and all unpaid indebtedness and obligations, if any such there be, which shall have been legally contracted or incurred by them in said causes, in the operation or on account of the railroad property embraced in said First Mortgage of the Denver Pacific Railway and Telegraph Company, at any time before the same shall be delivered to the purchaser or purchasers; and also any such unpaid compensation which has been or shall be allowed by the Court to the Receivers or their solicitors in the cause in which Oliver Ames, Second, Samuel Carr and others are complainants, and The Union Pacific Railway Company and others are defendants, pending in said courts and known as the "Ames Cause," and all such unpaid indebtedness, obligations and liabilities of the said Receivers in said Ames Cause which shall have been allowed or legally contracted or incurred by the said Receivers in the operation of said property embraced in said First Mortgage, and shall be properly chargeable to said property, to the extent to which the revenues and assets in the hands of said Receivers in said Ames cause shall be insufficient to pay and discharge such compensation, indebtedness, obligations and liabilities in said cause.

Second. Any indebtedness or liability contracted or incurred by the said The Union Pacific Railway Company, or by the said Receivers in the said Ames cause, in the operation of the railroad property covered by and embraced in the said First Mortgage, prior to the appointment of the Receivers in said foreclosure causes, which are superior in equity to said First Mortgage aforesaid, and payment whereof was provided for by order of said Circuit Court of the United States for the District of Colorado, dated November 19, 1894, and the order of said Court dated February 23rd, 1895,
6335 in said cause, and which shall not, at the time of such delivery of possession, have been paid or satisfied out of the income of the property in the hands of the Receivers, upon the Court adjudging the same to be prior in lien to said First Mortgage, and directing payment thereof; provided that suit be brought for the enforcement of such indebtedness or liability incurred by said railway company or Receivers within the period allowed by the Statute of limitations applicable thereto, after such indebtedness or liability was contracted or arose.

And subject, also, to all other terms, conditions and reservations of each of the said several decrees of foreclosure and sale and the

several decrees confirming the said sale entered by the United States Circuit Courts for the District of Colorado and the District of Wyoming, respectively, whether in this Indenture expressly referred to or not, including the reservation of the said Courts to retake and resell the premises herein conveyed in case the party of the sixth part to this Indenture or its successors or assigns should fail to pay any sum required to be paid under the said decrees within the time specified in said decrees respectively after the entry of an order requiring such payment.

And this Indenture further witnesseth, that whereas in and by the said decrees of foreclosure and sale of the said railroad, franchises, property and premises hereinbefore and in the said decrees described, the said Receivers and the Receivers theretofore appointed in the said Ames Cause were ordered and directed to make and deliver a sufficient deed conveying and assigning to the Purchaser or Purchasers at the said Master's Sale, and his or their assigns,
6336 all their right, title and interest in, of, or to, any property vested or standing in their names, or to which they have acquired title, as such Receivers, in the management and operation of the premises covered by and embraced in said First Mortgage, and hereby conveyed:

Now therefore the said Receivers as aforesaid, parties of the second part hereto, for and in consideration of the premises and of the sums as aforesaid paid by the said purchasers and of the assignment of the said bid by the said purchasers to the party of the sixth part hereto and in pursuance of the said decrees of the said Courts respectively, have granted, bargained, sold, assigned, transferred and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey unto the said party of the sixth part to-wit, Union Pacific Railroad Company, the corporation organized as aforesaid under and pursuant to the laws of the State of Utah, all their right, title and interest in, of, or to any property vested or standing in their names, or to which they have acquired title as such Receivers in the management and operation of the premises covered by and embraced in the said First Mortgage, and including any property and income owned or received by the said Receivers as Receivers in the said causes through the operation of the mortgaged premises, and any property acquired by said Receivers incident and appurtenant to said railroad, and any property purchased or acquired by the Receivers in the said Ames Cause for the operation or maintenance thereof, as fully and absolutely as the said Receivers may or ought by virtue of the said decrees to convey the same, subject, nevertheless, to all the debts, liabilities and obligations of the said Receivers as specified in the said decrees: To have and to hold all and singular the said
6337 property, real and personal, unto the said party of the sixth part hereto, its successors and assigns forever.

And this Indenture further witnesseth that the said Russell Sage and George J. Gould, parties of the third part hereto, as Trustees under the said First Mortgage dated August 10th, 1869, described in the said decrees, in consideration of the premises and of the payment

of the sums as aforesaid by the said purchasers and of the assignment of the said bid by the said purchasers to the party of the sixth part hereto and in pursuance of the said decrees and orders of the said Courts, respectively, have transferred and released, and by these presents do transfer and release, to the said Union Pacific Railroad Company, party of the sixth part hereto its successors and assigns forever, all the right, title and interest of the said parties of the third part hereto, under the said First Mortgage, in and to all the property hereinbefore conveyed by said Special Master, party of the first part hereto, as fully and absolutely as they may or ought by virtue of the said decrees to transfer and release the same: To have and to hold all and singular the said railroad, property and premises unto the said party of the sixth part hereto, its successors and assigns forever.

And this Indenture further witnesseth that said The Union Pacific Railway Company, party hereto of the fourth part, for and in consideration of the premises and in pursuance of the said decrees and orders of the said Courts respectively, has bargained, sold, assigned, transferred, conveyed and released, and by these presents does bargain, sell, assign, transfer, convey and release unto the party hereto of the sixth part, all the right, title and interest of The Union
6338 Pacific Railway Company, party hereto of the fourth part, in and to the said railroad, rights, properties, functions, franchises, privileges, immunities, lands, land grants, money and credits herein conveyed, assigned, transferred or released by the said Special Master, party of the first part, to this Indenture, as fully and absolutely as the said party of the fourth part hereto can or ought by virtue of the said decrees to convey the same: To have and to hold all and singular the said railroad, premises and property, real and personal, unto the said party of the sixth part hereto, its successors and assigns forever.

And this Indenture further witnesseth that the said Alvin W. Krech and Lawrence Greer, being the purchasers at the said sale of the said railroad, property and premises herein conveyed by the said Special Master under the said decrees of foreclosure, having assigned, transferred and set over, as hereinbefore recited, unto the party of the sixth part their said bid and their right to receive conveyance of the railroad, franchises, lands, land grants and other property purchased, and all their other rights under the said decrees, or by virtue of their said bid and purchase, do hereby join in the execution of this Indenture for the purpose of releasing and confirming, and they do hereby release and confirm unto the said Union Pacific Railroad Company, party hereto of the sixth part and its successors and assigns forever all of their right, title and interest in and to the property and premises in this Indenture conveyed and each and every part thereof.

It is understood that no personal covenant or liability is to be implied from this deed against the said parties of the first, second, third and fifth parts or against any of such parties.

In order to facilitate the recording hereof, six originals
6339 of this Indenture have been executed, acknowledged and delivered by the respective parties, all or any one or more of

which may be recorded, and each of them, when executed, acknowledged and delivered, shall be deemed an original and all collectively but one instrument.

In witness whereof, the said parties hereto of the first, second, third and fifth parts, have hereunto set their hands and seals, and the parties of the fourth and sixth parts have caused these presents to be signed by their respective officers, duly authorized, and their respective corporate seals to be hereto affixed, and attested by their respective secretaries the day and year first above written.

WILLIAM D. CORNISH. (SEAL.) Special Master.
S. H. H. CLARK. (SEAL.)
OLIVER W. MINK. (SEAL.)
E. ELLERY ANDERSON. (SEAL.) as Receivers.
FREDERIC R. COUDERT. (SEAL.)
JOHN W. DOANE. (SEAL.)
RUSSELL SAGE. (SEAL.)
GEORGE J. GOULD. (SEAL.) As Trustees.
ALVIN W. KRECH. (SEAL.)
LAWRENCE GREER. (SEAL.) as Purchasers.

THE UNION PACIFIC RAILWAY COMPANY,
By S. H. H. CLARK,
President.

Attest:
(SEAL.) ALEX. MILLAR,
Secretary.

6340

UNION PACIFIC RAILROAD COMPANY,
By HORACE G. BURT,
President.

Attest:
(SEAL.) ALEX. MILLAR,
Secretary.

Signed, sealed, and delivered by William D. Cornish, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, Russell Sage, George J. Gould, Alvin W. Krech and Lawrence Greer in the presence of	L. F. Timmerman. Edward Van Ingen.
By Silas H. H. Clark in the presence of	T. M. Orr. James P. Earl.
By S. H. H. Clark, President, on behalf of The Union Pacific Railway Company, in the presence of	T. M. Orr. James P. Earl.
By Alex. Millar, Secretary, on behalf of The Union Pacific Railway Company, in the presence of	L. F. Timmerman. Edward Van Ingen.
By Horace G. Burt, President, and Alex. Millar, Secretary, on behalf of Union Pacific Railroad Company, in the presence of	L. F. Timmerman. Edward Van Ingen.

6341 Mr. LOVETT. The Defendants also offer in evidence the Articles of Incorporation of the defendant Union Pacific Railroad Company, with the various amendments thereto, which have already been introduced by Complainant as Complainant's Exhibit 205.

6342 Mr. LOVETT. I now offer in evidence certified copy of Articles of Consolidation and Agreement between The Oregon Short Line Railway Company, The Utah and Northern Railway Company, The Utah Central Railway Company, The Salt Lake and Western Railway Company, The Utah and Nevada Railway Company, The Ogden and Syracuse Railway Company, The Idaho Central Railway Company, and the Nevada Pacific Railway Company, dated July 27, 1889, and filed in the office of the Secretary of State of the State of Utah, August 1, 1889, the same being Defendants' Exhibit 35.

Defendants' Exhibit 35 is as follows:

DEFENDANT'S EXHIBIT 35.

ARTICLES OF CONSOLIDATION AND AGREEMENT

Between

THE OREGON SHORT LINE RAILWAY COMPANY, THE UTAH AND NORTHERN RAILWAY COMPANY, THE UTAH CENTRAL RAILWAY COMPANY, THE SALT LAKE AND WESTERN RAILWAY COMPANY, THE UTAH AND NEVADA RAILWAY COMPANY, THE OGDEN AND SYRACUSE RAILWAY COMPANY, THE IDAHO CENTRAL RAILWAY COMPANY, AND THE NEVADA PACIFIC RAILWAY COMPANY.

Whereas, the Oregon Short Line Railway Company is a corporation organized under the laws of the Territory of Wyoming, a certificate of the Articles of Incorporation whereof was filed in the office of the Secretary of Wyoming Territory on or about the 14th day of April, 1881, and afterwards an amended certificate of Articles of Incorporation of said Oregon Short Line Railway Com-
6343 pany was filed in the office of the said Secretary on or about July 12, 1881, which Articles were afterwards amended by an amended certificate of Articles of Incorporation adopted by the Board of Trustees, March 4, 1889, and filed with the said Secretary on or about the 11th day of March, 1889; and

Whereas, Congress, by an Act approved August 2nd, 1882, made the said Oregon Short Line Railway Company, a railway corporation in the Territories of Utah, Idaho and Wyoming, under the same conditions and limitations, and with the same rights and privileges that it has and enjoys under its Articles of Incorporation within the Territory of Wyoming; and

Whereas, said Company owns a line of railroad and telegraph extending from a point commencing at or near Granger, on the line of

the Union Pacific Railway, in Sweetwater County, and thence running in a northwesterly direction through the Territories of Wyoming and Idaho and into the State of Oregon to the Town of Huntington, a distance of 541.81 miles or thereabouts, together with a branch extending from Shoshone, Idaho, to Ketchum, Idaho, a distance of 69.96 miles or thereabouts, making a total distance of 611.77 miles of completed railroad or thereabouts, of which 22.81 miles between McCammon and Pocatello, Idaho, are owned and used jointly with the Utah and Northern Railway Company, with power under its Articles and amended Articles of Incorporation and the said Act of Congress of August 2nd, 1882, to build and acquire branches and extensions of its said railroad; and

Whereas, the Utah and Northern Railway Company is a corporation duly organized under the laws of Utah, and by an Act
6344 of Congress, approved June 20th, 1878, was made a railway corporation in the Territories of Utah, Idaho and Montana, as will more fully appear by reference thereto; and

Whereas, said Company owns a line of railroad and telegraph extending from Ogden in Utah, northerly through Utah to a connection in Idaho, with said railroad of the Oregon Short Line Railway Company, and thence extending northerly through Idaho into Montana to Garrison, with a branch from Silver Bow, Montana, to end of the track north of Butte City, Montana, in all 466.61 miles or thereabouts, of which 22.81 miles, between McCammon and Pocatello, Idaho, are owned and used jointly with the Oregon Short Line Railway Company; and,

Whereas, the Utah Central Railway Company is a corporation organized under the laws of Utah Territory, and the same is now constructed from Ogden to Frisco in said Territory, a distance of about 275.50 miles, and its franchises extend to the western line of the Territory of Utah, and to other points in said Territory, and its said line connects with the Utah and Northern Railway at Ogden in the said Territory of Utah, and by the railroad of the last named Company connecting with the Oregon Short Line Railway; and

Whereas, the Salt Lake and Western Railway Company, duly organized as a corporation under the laws of Utah, has a railroad line which extends from a place called Lehi Junction in Utah County on the Utah Central Railway, thence in a southwesterly direction to a place called Tintic, in the County of Juab, a distance of 53.77 miles, together with a branch extending from Ironton, Utah, to Silver City,
Utah, a distance of 3.94 miles or thereabouts; also a spur track
6345 from Silver City, Utah, to Eureka, Utah, 0.21 miles, together with an extension of said spur now under process of construction, from its present terminus to the Eureka Mines, a distance of about 3.23 miles; and

Whereas, the said Utah and Nevada Railway Company is a railroad corporation organized under the laws of Utah, and has a railroad that connects with the Utah Central Railway at Salt Lake City, and runs westward into Tooele County, a distance of 37.00 miles or thereabouts, together with a branch extending from Saltair Junc-

tion to the Great Salt Lake, a distance of 2.50 miles or thereabouts; and

Whereas, the said Ogden and Syracuse Railway Company, is a railway corporation organized under the laws of Utah, and has a railroad that connects with the Utah Central Railway at a place called Syracuse Junction, in Davis County, and extends westward a distance of 5.85 miles or thereabouts; and

Whereas, The Idaho Central Railway Company is a corporation organized under the laws of Wyoming Territory, owning railway property in the Territory of Idaho, which connects with the Oregon Short Line Railway at Nampa, and runs to Boise City, a distance of 18.94 miles or thereabouts; and

Whereas, The Nevada Pacific Railway Company is a railway corporation organized and existing under the laws of the State of Nevada, and its franchise connects with the franchise of and authorizes it to construct and connect its road with the Utah Central Railway Company's road, and it proposes to build and operate its road from a point on the eastern boundary line of the State of
6346 Nevada, near Pioche, in Lincoln County; thence in a southwesterly course across the State of Nevada to the Western boundary line of said State, with two branch roads therein extending into the Counties of White Pine and Nye; and

Whereas, Under the laws and the legislation applicable to the said companies, they are empowered to consolidate and unite, as herein provided, their respective capital stocks, railroads, property and franchises, on such terms and conditions as they may prescribe, not inconsistent with law; and

Whereas, Said Companies, by corporate action duly and severally had, have resolved, pursuant to authority of law in that behalf vested in them, to consolidate their respective capital stocks, railroads, property and franchises into one company, and have severally agreed to and with each other upon the terms and conditions of such consolidation, being the terms and conditions herein expressed.

Now, this agreement of consolidation, Made this 27th day of July, A. D., 1889, between the Oregon Short Line Railway Company, the Utah and Northern Railway Company, the Utah Central Railway Company, the Salt Lake and Western Railway Company, the Utah and Nevada Railway Company, the Ogden and Syracuse Railway Company, the Idaho Central Railway Company and the Nevada Pacific Railway Company, all parties hereto,

Witnesseth: That the said Corporations have respectively and jointly agreed with each other to consolidate, and do hereby consolidate all of said companies under the following

ARTICLES OF CONSOLIDATION.

ARTICLE FIRST.

The said eight railway corporations in consideration of
6347 the premises do hereby severally agree to and with each other to unite and consolidate, and do hereby unite, form and con-

solidate their respective organizations, capital stock, railroads, property and franchises of every nature and description into one company, which shall continue in existence for a period of fifty years, unless sooner disincorporated, and which shall be called and known by the corporate name of the Oregon Short Line and Utah Northern Railway Company.

ARTICLE SECOND.

The capital stock of said Oregon Short Line and Utah Northern Railway Company, the corporation hereby formed, shall be $24,789,039.33, which shall be divided into shares of one hundred dollars each, and which shall be issued in lieu of stock of the said eight constituent companies on the surrender thereof for that purpose by the respective holders thereof.

Every stockholder in the Oregon Short Line Railway Company shall receive in place of every share of one hundred dollars surrendered a share of one hundred dollars in the new company, and every stockholder in the Utah and Northern Railway Company shall receive in place of every four shares of one hundred dollars surrendered five shares of one hundred dollars each in the new Company, and every stockholder in the Utah Central Railway Company shall receive in place of every three shares of one hundred dollars surrendered two shares of one hundred dollars each in the new Company; every stockholder in the Salt Lake and Western Railway Company shall receive in place of every three shares of one hundred dollars surrendered two shares of one hundred dollars each in
6348 the new Company, and every stockholder in the Utah and Nevada Railway Company shall receive in place of every ten shares of one hundred dollars surrendered one bond of the par value of one thousand dollars of the new Company and one share of stock of one hundred dollars in the new Company, and every stockholder in the Ogden and Syracuse Railway Company shall receive in place of every ten shares of one hundred dollars surrendered one bond of the par value of one thousand dollars of the new Company and one share of stock of one hundred dollars in the new Company, and every stockholder in the Idaho Central Railway Company shall receive in place of every three shares of one hundred dollars surrendered two shares of one hundred dollars each in the new Company, and every stockholder in the Nevada Pacific Railway Company shall receive in place of every four shares of one hundred dollars surrendered one share of one hundred dollars in the new Company.

If any stockholders of either or any of the said constituent companies have the legal right to demand the appraised value of their stock merged in and surrendered to the consolidated company, and if they refuse to surrender their stock, and to accept their proportion of stock in the consolidated company in the proportion aforesaid, they shall be paid for their stock so surrendered or merged in the new corporation the appraised value thereof, to be ascertained as follows: The corporation hereby formed shall appoint one appraiser,

and the holder of such stock shall appoint another, who shall determine the cash value of said stock at the date when this consolidation takes effect, and if they cannot agree, these two shall select a
6349 third, and the decision of a majority as to such value shall be final and conclusive upon the parties. The corporation hereby formed shall not be liable to an action in respect to such stock, or for the value thereof, unless it shall refuse to have the same appraised as herein provided, or shall refuse to pay such appraised value.

ARTICLE THIRD.

The Board of Directors of said consolidated company shall have power to provide and adopt such rules as may be necessary for the issuing and transfer of shares of stock of said company, and to provide for the appraisement of the value of stock as contemplated in the preceding Article hereof.

ARTICLE FOURTH.

The business and affairs of this consolidated company shall be under the control and management of a Board of Directors, consisting of nine members, who shall be elected annually by the stockholders from their number, voting in person or by proxy.

ARTICLE FIFTH.

The first election of the Board of Directors of the consolidated company hereby formed shall be held at the City of Salt Lake, in Utah Territory, on the 3rd Wednesday of March, 1890, and annually thereafter at the same time and place.

The names and residences of the first Directors of said company, who shall manage its affairs until the annual election of Directors on the nineteenth day of March, 1890, and till others are chosen and qualified in their places, are as follows:

6350

Name.	Place of residence.
Charles Francis Adams	Quincy, Mass.
Frederick L. Ames	North Easton, Mass.
F. Gordon Dexter	Beverly, Mass.
Edwin F. Atkins	Belmont, Mass.
Sydney Dillon	New York.
John Sharp	Salt Lake City, Utah Ter.
Wm. H. Holcomb	Omaha, Neb.
Oliver W. Mink	Boston, Mass.
George M. Cumming	Salt Lake City, Utah Ter.

ARTICLE SIXTH.

The Directors of said consolidated company shall annually as soon as may be after their election, elect from their own number a President, a Vice-President, and at their option a second Vice-President, who need not be a member of Board. They shall have power

to elect a Treasurer and a Secretary, and, at their option, a Comptroller and an assistant Treasurer and Secretary, and such other officers as they may from time to time determine.

The following named persons shall be the first officers of said corporation, and they shall hold their several offices till their successors are duly elected and qualified, namely:

Names.	Place of business.
Charles F. Adams, President	Boston.
William H. Holcomb, Vice-President	Omaha.
Gardiner M. Lane, Second Vice-President	Boston.
James G. Harris, Treasurer	Boston.
Oliver W. Mink, Comptroller	Boston.
Alex. Millar, Secretary	Boston.
Luther S. Anderson, Assistant Treasurer	Boston.

6351

ARTICLE SEVENTH.

The Stockholders' meeting for the election of Directors shall be held at the place above named, of which notice shall be given in the manner required by the laws of Utah for annual meetings of stockholders in railroad companies.

ARTICLE EIGHTH.

The termini of the roads hereby consolidated, are Granger, in Wyoming Territory; Huntington in the State of Oregon; Garrison in Montana; a point north of Butte City in Montana, about 13.10 miles northeast of Silver Bow; Ketchum and Boise City in Idaho Territory, and the following named places in Utah Territory, viz.: Frisco in Beaver County; a point at or near Kanara Coal Fields in Iron County, and the Coal Fields in Castle Valley, Emery County, the same being Township twenty-three (23) south of range seven (7) east Salt Lake meridian, and a point at or near the coal lands of the Pleasant Valley Coal and Coke Company in Pleasant Valley, Emery County; Tintic, Silver City and Eureka Mines in Juab County, Stockton Station in Tooele County; and the following named places in the State of Nevada, to-wit: Steptoe in White Pine County, a point on the southwestern boundary line of the State of Nevada about half way between the thirty-fifth and thirty-sixth degrees north latitude, also a point on the southwestern boundary line of said State of Nevada at a place called Ash Meadows between thirty-six and thirty-seven degrees north latitude.

The cost of constructing the consolidated road, including its right of way, stations, rolling stock, machinery, motive power and
6352 other appurtenances, is about fifty-six million five hundred thousand dollars.

The route of said consolidated railroad as now constructed and in operation and to be constructed and the places from and to which it is proposed to run, and the counties, territories and states into and through which it passes and is to pass, are as follows:

Commencing at a point on the Union Pacific Railway at a place called Granger in Sweetwater County in Wyoming Territory; thence in a westerly route into and through Uintah County in said last named territory; thence into and through the Counties of Bear Lake, Bingham, Oneida, Alturas, Ada and Washington, including a short branch to Ketchum in the County of Alturas in the Territory of Idaho; thence into the County of Baker in the State of Oregon; also commencing at Garrison in Montana Territory; thence south through the Counties of Deer Lodge, Silver Bow, Madison, Beaver Head, in said last named Territory; thence through the Counties of Bingham and Oneida in Idaho Territory; thence through the Counties of Cache, Box Elder, Weber, Davis, Salt Lake, Utah, Juab, Millard, Beaver, Iron, San Pete, Sevier, Emery and Tooele of Utah Territory; thence into and through the County of Lincoln, in the State of Nevada to the southwestern boundary line of the State, with branch lines extending into White Pine County and Nye County, aggregating about two thousand two hundred and twenty-four miles of railroad now constructed and to be constructed.

ARTICLE NINTH.

The parties hereto, the said Oregon Short Line Railway Company, the Utah and Northern Railway Company, the Utah
6353 Central Railway Company, the Salt Lake and Western Railway Company, the Utah and Nevada Railway Company, the Ogden and Syracuse Railway Company, the Idaho Central Railway Company and the Nevada Pacific Railway Company hereby assign, transfer and set over to the Oregon Short Line and Utah Northern Railway Company, the corporation hereby formed, all the rights, privileges, exemptions and franchises of each of said companies, parties hereto, and all railroads and other property, real, personal or mixed, all choses in action, debts owing to said companies, all claims, demands, property, rights of way, leases, leasehold interests, and property of every description, name and nature, belonging to either of said companies, to be held, owned and controlled by the said consolidated corporation, its successors and assigns, with all of the rights of each of the said parties hereto as fully and completely in all respects and to all intents and purposes as the respective parties thereto do now or can own, hold, use, enjoy and control the same; and the said parties hereto agree to execute and deliver to the said consolidated corporation instruments of transfer or assignment, or other instruments proper or necessary to carry out the covenants, conditions and provisions of this Agreement. This assignment, transfer, sale and conveyance is made to the said consolidated corporation subject to all valid liens, charges and equities pertaining thereto. Nothing herein contained shall impair or in any manner affect any valid debt, obligation or liability, either in favor of or against any of the said parties to this agreement, or impose upon the consolidated
6354 company any greater liability than rests upon the respective constituent companies, parties hereto.

ARTICLE TENTH.

It is expressly understood that the company hereby formed shall possess all the powers of each of the constituent companies including the powers to build and acquire, use and operate any of the lines of railway, extensions or branches which either of the constituent companies might build, acquire, use and operate, and shall have power to perform, as the successor and assignee of the lessee or lessees, any contracts of lease or indenture which may have been executed by or to the parties hereto, or any of them; to perform and keep all legal and valid covenants, contracts and promises of any of the parties hereto in respect thereof, and in respect of any traffic arrangements or other contracts entered into by them, or any of them; and generally to have and exercise all the rights, powers and privileges authorized by law, in either of said territories or states in which it is now or may be hereafter constructed; and especially to buy, own and operate other railroad properties and franchises.

ARTICLE ELEVENTH.

Said company hereby formed shall have power from time to time to increase its capital stock and to issue bonds and secure the same by trust deeds or mortgages on the real and personal property and franchises of said consolidated company to such amounts as may be necessary to raise the means or money necessary to effect any legitimate corporate purposes under existing charters and articles of incorporation or any amendments thereof. Nothing in these Articles of Consolidation contained shall affect or impair the right to issue any
6355 unissued bonds authorized by and pursuant to the terms of the mortgage of the Oregon Short Line Railway Company, dated November 1st, 1881, or to affect or impair the right to issue all unissued bonds under and pursuant to any of the existing mortgages of the Utah and Northern Railway Company, or of any other of the parties to this Agreement. All such unissued bonds of any of the parties to this Agreement, may, notwithstanding this consolidation, be issued in the same manner and to the same effect in all respects as if these Articles had not been adopted and executed. It is expressly agreed that the stockholders of the consolidated company shall have all the powers which would have been possessed by the stockholders of each of the constituent companies, parties hereto, if this consolidation had not been effected, to ratify, approve and carry out any contract or contracts made by either constituent company, and requiring the ratification or approval of its stockholders.

ARTICLE TWELFTH.

The principal place of business of the company hereby formed in the Territory of Wyoming shall be the City of Cheyenne; in the Territory of Utah, the City of Salt Lake; in the territory of Idaho,

the Town of Pocatello; in the Territory of Montana, the City of Butte; in the State of Oregon, the Town of Huntington, and in the State of Nevada, the Town of Reno.

ARTICLE THIRTEENTH.

The existing by-laws of the Oregon Short Line Railway Company are hereby provisionally adopted, and shall apply to the company hereby formed until duly changed or repealed.

6356 ARTICLE FOURTEENTH.

These Articles may be amended and modified from time to time in such manner as the holders of two-thirds of the stock of the company hereby formed may direct or approve, either in writing or at any general or special meeting of the stockholders.

ARTICLE FIFTEENTH.

The invalidity of any clause, provision or article hereof shall not affect the validity of these Articles of Consolidation or of any other clause, provision or article hereof. Any want of corporate capacity of any party or parties hereto, if such should exist shall not invalidate these Articles as to the other parties hereto or invalidate the consolidated corporation hereby formed.

ARTICLE SIXTEENTH.

This Agreement shall be executed on the part of the respective parties hereto by the proper officers, and under the corporate seals of said companies, and shall take effect when the same shall be approved at a meeting of the stockholders of the said several companies, called and held in the manner provided by law, or shall be otherwise approved as required by law, and when the same, or a duplicate thereof, shall be filed in the several offices as required by the statutes of the States or Territories where the said several companies heretofore existed.

6357 In witness whereof, the said parties have caused their respective corporate seals to be hereto affixed, and the same to be attested by their respective Presidents and Secretaries, this 27th day of July, 1889.

THE OREGON SHORT LINE RAILWAY COMPANY,
By F. GORDON DEXTER, *Vice President.*

Attest:

[SEAL.] ALEX. MILLAR, *Secretary.*

THE UTAH AND NORTHERN RAILWAY COMPANY,
By F. GORDON DEXTER, *Vice President.*

Attest:

[SEAL.] ALEX. MILLAR, *Secretary.*

THE UTAH CENTRAL RAILWAY COMPANY,
By JOHN SHARP, *Vice President.*

Attest:

[SEAL.] GEORGE SWAN, *Secretary.*

THE SALT LAKE AND WESTERN RAILWAY COMPANY,
By GARDINER MARTIN LANE, *Vice President.*

Attest:

[SEAL.] ALEX. MILLAR, *Secretary.*

THE UTAH AND NEVADA RAILWAY COMPANY,
By W. W. RITER, *Vice President.*

Attest:

[SEAL.] ALEX. MILLAR, *Secretary.*

THE OGDEN AND SYRACUSE RAILWAY COMPANY,
By F. GORDON DEXTER, *Vice President.*

Attest:

[SEAL.] ALEX. MILLAR, *Secretary.*

6358 THE IDAHO CENTRAL RAILWAY COMPANY,
By E. DICKINSON, *President.*

Attest:

[SEAL.] JAS. A. MCGEE, *Secretary.*

THE NEVADA PACIFIC RAILWAY COMPANY,
By JOHN SHARP, *President.*

Attest:

[SEAL.] JOS. A. JENNINGS, *Secretary.*

CERTIFICATE OF THE SECRETARY OF THE OREGON SHORT LINE RAILWAY COMPANY.

I, Alexander Millar, hereby certify that I am the duly elected, acting and qualified Secretary of the Oregon Short Line Railway Company; that pursuant to notice heretofore given in the manner required by law, there was held a meeting of the stockholders of said Company at the Company's office in Cheyenne, Wyoming, on the Seventeenth (17th) day of July, 1889, at which time and place there was duly and properly represented over two-thirds of said Company's capital stock, and I further certify that then and there the foregoing Agreement was considered for consolidating the Oregon Short Line Railway Company with the Utah and Northern Railway Company, the Utah Central Railway Company, the Salt Lake and Western Railway Company, the Utah and Nevada Railway Company, the Ogden and Syracuse Railway Company, the Idaho Central Railway Company, and the Nevada Pacific Railway Company, under the name and style of the Oregon Short Line and Utah Northern
6359 Railway Company, and the said Agreement of consolidation was duly read, and votes were cast by ballot for the adoption or rejection of said Agreement of Consolidation. I further certify that I personally counted all the votes given, and that more than two-thirds of the entire capital stock of said Oregon Short Line

Railway Company were cast and voted in favor of said consolidation on the terms and conditions contained in the foregoing Articles of Agreement and Consolidation.

In testimony whereof, I have hereunto affixed the corporate seal of the Oregon Short Line Railway Company, and I have also subscribed my name as its Secretary.

[SEAL.]

ALEX. MILLAR,
Secretary.

CERTIFICATE OF THE SECRETARY OF THE UTAH AND NORTHERN RAILWAY COMPANY.

I, Alexander Millar, hereby certify that I am the duly elected, acting and qualified Secretary of the Utah and Northern Railway Company; that pursuant to notice heretofore given in the manner required by law, there was held a meeting of the stockholders of said company at the Company's office in Ogden, Utah, on the 17th day of July, 1889, at which time and place there was duly and properly represented over two-thirds of said Company's capital stock, and I further certify that then and there the foregoing agreement was considered for consolidating the Utah and Northern Railway Company with the Oregon Short Line Railway Company, the Utah Central Railway Company, the Salt Lake and Western Railway Company,
the Utah and Nevada Railway Company, the Ogden and
6360 Syracuse Railway Company, the Idaho Central Railway, and
the Nevada Pacific Railway Company under the name and style of the Oregon Short Line and Utah Northern Railway Company, and the said Agreement of consolidation was duly read, and votes were cast by ballot for the adoption or rejection of said Agreement of Consolidation. I further certify, that I personally counted all the votes given, and that more than two-thirds of the entire capital stock of said first named Company were cast and voted in favor of said consolidation on the terms and conditions contained in the foregoing Articles of Agreement and Consolidation.

In testimony whereof, I have hereunto affixed the corporate seal of the Utah and Northern Railway Company, and I have also subscribed my name as its Secretary.

[SEAL.]

ALEX. MILLAR,
Secretary.

CERTIFICATE OF THE SECRETARY OF THE UTAH CENTRAL RAILWAY COMPANY.

I, George Swan, hereby certify that I am the duly elected, acting and qualified Secretary of the Utah Central Railway Company; that pursuant to notice heretofore given in the manner required by law, there was held a meeting of the stockholders of said company in its office at the Deseret National Bank Building in Salt Lake City on

the Eleventh (11th) day of July, 1889, at which time and place there were duly and properly represented over two-thirds of said Company's capital stock, and I further certify that then and there the foregoing Agreement was considered for consolidating the Utah Central Railway Company with the Oregon Short Line Railway
6361 Company, The Utah and Northern Railway Company, the Salt Lake and Western Railway Company, the Utah and Nevada Railway Company, the Ogden and Syracuse Railway Company, the Idaho Central Railway Company, and the Nevada Pacific Railway Company, under the name and style of the Oregon Short Line and Utah Northern Railway Company, and the said Agreement of Consolidation was duly read and votes were cast by ballot for the adoption or rejection of said Agreement of Consolidation. I further certify that I personally counted all the votes given, and that more than two-thirds of the entire capital stock of said first named Company were cast and voted in favor of said consolidation on the terms and conditions contained in the foregoing Articles of Agreement and Consolidation.

In testimony whereof, I have hereunto affixed the corporate seal of the Utah Central Railway Company, and I have also subscribed my name as its Secretary.

[SEAL.] GEORGE SWAN, *Secretary.*

CERTIFICATE OF THE SECRETARY OF THE SALT LAKE AND WESTERN RAILWAY COMPANY.

I, Alexander Millar, hereby certify that I am the duly elected, acting and qualified Secretary of the Salt Lake and Western Railway Company; that pursuant to notice heretofore given in the manner required by law, there was held a meeting of the stockholders of said Company at its office in Salt Lake City, on the 17th day of July, 1889, at which time and place there were duly and properly repre-
6362 sented over two-thirds of said Company's capital stock, and I further certify that then and there the foregoing Agreement was considered for consolidating the Salt Lake and Western Railway Company with the Oregon Short Line Railway Company, the Utah and Northern Railway Company, the Utah Central Railway Company, the Utah and Nevada Railway Company, the Ogden and Syracuse Railway Company, the Idaho Central Railway Company, and the Nevada Pacific Railway Company, under the name and style of the Oregon Short Line and Utah Northern Railway Company, and the said Agreement of Consolidation was duly read, and votes were cast by ballot for the adoption or rejection of said Agreement of Consolidation. I further certify that I personally counted all the votes given, and that more than two-thirds of the entire capital stock of said first named Company were cast and voted in favor of consolidation on the terms and conditions contained in the foregoing Articles of Agreement and Consolidation.

In testimony whereof, I have hereunto affixed the corporate seal of the Salt Lake and Western Railway Company, and I have also subscribed my name as its Secretary.

[SEAL.] ALEX. MILLAR,
Secretary.

CERTIFICATE OF THE SECRETARY OF THE UTAH AND NEVADA RAILWAY COMPANY.

I, Alexander Millar, hereby certify that I am the duly elected, acting and qualified Secretary of the Utah and Nevada Railway Company; that pursuant to notice heretofore given in the manner
6363 required by law, there was held a meeting of the stockholders of said Company at its office in Salt Lake City, on the seventeenth day of July, 1889, at which time and place there were duly and properly represented over two-thirds of said Company's capital stock, and I further certify that then and there the foregoing Agreement was considered for consolidating the Utah and Nevada Railway Company with the Oregon Short Line Railway Company, the Utah and Northern Railway Company, the Utah Central Railway Company, the Salt Lake and Western Railway Company, the Ogden and Syracuse Railway Company, the Idaho Central Railway Company, and the Nevada Pacific Railway Company, under the name and style of the Oregon Short Line and Utah Northern Railway Company, and the said Agreement of Consolidation was duly read, and votes were cast by ballot for the adoption or rejection of said Agreement of consolidation. I further certify that I personally counted all the votes given and that more than two-thirds of the entire capital stock of said first named Company were cast and voted in favor of consolidation on the terms and conditions contained in the foregoing Articles of Agreement and Consolidation.

In testimony whereof, I have hereunto affixed the corporate seal of the Utah and Nevada Railway Company, and I have also subscribed my name as its Secretary.

[SEAL.] ALEX. MILLAR,
Secretary.

CERTIFICATE OF THE SECRETARY OF THE OGDEN AND SYRACUSE RAILWAY COMPANY.

I, Alexander Millar, hereby certify that I am the duly
6364 elected, acting and qualified Secretary of the Ogden and Syracuse Railway Company; that pursuant to notice heretofore given in the manner required by law, there was held a meeting of the stockholders of said Company at its office in Ogden City, on the seventeenth day of July, 1889, at which time and place there were duly and properly represented over two-thirds of said company's capital stock, and I further certify that then and there the foregoing agreement

was considered for consolidating the Ogden and Syracuse Railway Company with the Oregon Short Line Railway Company, the Utah and Northern Railway Company, the Utah Central Railway Company, the Salt Lake and Western Railway Company, the Utah and Nevada Railway Company, the Idaho Central Railway Company, and the Nevada Pacific Railway Company, under the name and style of the Oregon Short Line and Utah Northern Railway Company, and the said Agreement of Consolidation was duly read, and votes were cast by ballot for the adoption or rejection of said Agreement of Consolidation. I further certify that I personally counted all the votes given, and that more than two-thirds of the entire capital stock of said first named Company were cast and voted in favor of consolidation on the terms and conditions contained in the foregoing Articles of Agreement and Consolidation.

In testimony whereof, I have hereunto affixed the corporate seal of the Ogden and Syracuse Railway Company, and I have also subscribed my name as its Secretary.

[SEAL.]

ALEX. MILLAR,
Secretary.

6365 CERTIFICATE OF THE SECRETARY OF THE IDAHO CENTRAL RAILWAY COMPANY.

I, James A. McGee, hereby certify that I am the duly elected, acting and qualified Secretary of the Idaho Central Railway Company; that pursuant to notice heretofore given in the manner required by law there was held a meeting of the stockholders of said Company at its office in Cheyenne, Wyoming, on the 17th day of July, 1889, at which time and place there were duly and properly represented over two-thirds of said Company's capital stock, and I further certify that then and there the foregoing agreement was considered for consolidating the Idaho Central Railway Company with the Oregon Short Line Railway Company, the Utah and Northern Railway Company, the Utah Central Railway Company, the Salt Lake and Western Railway Company, the Utah and Nevada Railway Company, the Ogden and Syracuse Railway Company, and the Nevada Pacific Railway Company, under the name and style of the Oregon Short Line and Utah Northern Railway Company, and the said Agreement of Consolidation was duly read and votes were cast by ballot for the adoption or rejection of said Agreement of Consolidation. I further certify that I personally counted all the votes given, and that more than two-thirds of the entire capital stock of said first named Company were cast and voted in favor of consolidation on the terms and conditions contained in the foregoing Articles of Agreement and Consolidation.

6366 In testimony whereof, I have hereunto affixed the corporate seal of the Idaho Central Railway Company, and I have also subscribed my name as its Secretary.

[SEAL.]

JAS. A. MCGEE,
Secretary.

CERTIFICATE OF THE SECRETARY OF THE NEVADA PACIFIC RAILWAY COMPANY.

I, Jos. A. Jennings, hereby certify that I am the duly elected, acting and qualified Secretary of the Nevada Pacific Railway Company; that pursuant to notice heretofore given in the manner required by law there was held a meeting of the stockholders of said Company at its office in Virginia City, Nevada, on the 12th day of July, 1889, at which time and place there were duly and properly represented over two-thirds of said Company's capital stock, and I further certify that then and there the foregoing Agreement was considered for consolidating the Nevada Pacific Railway Company with the Oregon Short Line Railway Company, the Utah and Northern Railway Company, the Utah Central Railway Company, the Salt Lake and Western Railway Company, the Utah and Nevada Railway Company, the Ogden and Syracuse Railway Company, and the Idaho Central Railway Company, under the name and style of the Oregon Short Line and Utah Northern Railway Company, and the said Agreement of Consolidation was duly read, and votes were cast by ballot for the adoption or rejection of said Agreement of Consolidation.

6367 I further certify that I personally counted all the votes given, and that more than two-thirds of the entire capital stock of said first named company were cast and voted in favor of consolidation on the terms and conditions contained in the foregoing Articles of Agreement and Consolidation.

In testimony whereof, I have hereunto affixed the corporate seal of the Nevada Pacific Railway Company, and I have also subscribed my name as its secretary.

JOS. A. JENNINGS,
[SEAL.] *Secretary.*

(Endorsed:) Filed August 1, 1889. John M. Dormer, Secretary of State, by A. C. Pratt, Deputy. Recorded pages 621–640. A. C. P.

STATE OF NEVADA,
Department of State. ss.:

I, Eugene Howell, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the original Articles of Consolidation and Agreement between The Oregon Short Line Railway Company, The Utah and Northern Railway Company, The Utah Central Railway Company, The Salt Lake and Western Railway Company, The Utah & Nevada Railway Company, The Ogden and Syracuse Railway Company, the Idaho Central Railway Company, and The Nevada Pacific Railway Company, now on file and of record in this office.

6368 In witness whereof, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, this 20th day of April, A. D. 1901.

(Great Seal of the State of Nevada.)

EUGENE HOWELL,
Secretary of State.
By A. W. MORRIS,
Deputy.

(10c. I. R. Stamp, cancelled.)

6369 Mr. LOVETT. It is stipulated that, under decrees of the Circuit Court of the United States for the District of Utah, and ancillary decrees in the same litigation in the Circuit Court of the United States for the Districts of Wyoming, Idaho, Montana and Oregon, the railroads of the Oregon Short Line and Utah Northern Railway Company, the consolidated company described in Defendants' Exhibit 35, with their appurtenances, were sold; that such sales were duly confirmed, and the properties thus sold were conveyed by the purchaser to the defendant Oregon Short Line Railroad Company, on the 16th day of March, 1897.

I now offer, on behalf of the Defendants, the Articles of Incorporation and Amended Articles of Incorporation of the defendant Oregon Short Line Railroad Company, heretofore introduced on behalf of the Complainant, and already appearing in the record as Complainant's Exhibit 206, folio 5705 (printed page 3433).

Mr. LOVETT. It is stipulated that under decrees of the Circuit Court of the United States for the District of Oregon, and ancillary decrees in the same litigation by the Circuit Courts of the United States for the Districts of Washington and Idaho, the railroads, with their appurtenances, of the Oregon Railway & Navigation Company were sold; that such sales were duly confirmed, and the properties thus sold were duly conveyed to the defendant The Oregon Railroad & Navigation Company, on the 17th day of August, 1896.

I now offer on behalf of the Defendants the Articles of Incor-
6370 poration and Amended Articles of Incorporation of the defendant Oregon Railroad & Navigation Company heretofore introduced on behalf of Complainant, and already appearing in the record as Complainant's Exhibit 207, folio 5717 (printed page 3439).

Mr. LOVETT. I offer in evidence on behalf of the Defendants, copy of an Act of the General Assembly of the State of Kentucky, incorporating the Southern Pacific Company, approved March 17, 1884, and the Amendment thereto, approved March 21, 1888, heretofore introduced on behalf of the Complainant, and already appearing in the record as Complainant's Exhibit 208.

Mr. LOVETT. I now offer Defendants' Exhibit 36, being copy of an Agreement between the United States of America, The Central Pacific Railroad Company and Messrs. Speyer & Co., dated February 1, 1899.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 36 is as follows:

DEFENDANTS' EXHIBIT 36.

Agreement made and entered into the first day of February, 1899, by and between the United States of America, acting by Honorable Lyman J. Gage, Secretary of the Treasury; Honorable Cornelius N. Bliss, Secretary of the Interior, and Honorable John W. Griggs, Attorney General, appointed by Act of Congress approved July 7,
6371 1898, a Commission with full power to settle the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, of the first part; the Central Pacific Railroad Company, a corporation created, organized and existing under the laws of the State of California and of the United States of America, of the second part, and Messrs. Speyer & Company, bankers, of the City of New York, of the third part.

Whereas, the Central Pacific Railroad Company, as now existing, was formed by the successive consolidations hereinafter mentioned, that is to say:

(a) Consolidation of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company into a corporation named the Central Pacific Railroad Company, under Articles of Association and Consolidation dated June 22, 1870.

(b) Consolidation of the last-mentioned Central Pacific Railroad Company, the California and Oregon Railroad Company, the San Francisco, Oakland and Alameda Railroad Company and the San Joaquin Valley Railroad Company into a corporation named the Central Pacific Railroad Company, under Articles of Association and Consolidation dated August 20, 1870.

And, whereas, the said Central Pacific Railroad Company, party of the second part hereto, is the owner of the following lines of railroad with their appurtenances, which are known as and called the "Bond-Aided Lines," viz.:

A. The line of railroad (about 737.50/100 miles in length), from a point about five miles west of Ogden to Sacramento, to
6372 aid in the construction of which bonds were from time to time issued by the United States to the Central Pacific Railroad Company of California to the amount in the aggregate of twenty-five million eight hundred and eighty-five thousand one hundred and twenty dollars ($25,885,120) under and in pursuance of the provisions of the Act of Congress of the United States, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, the Act to amend the last-mentioned Act, approved July 2, 1864, and the Act to amend the above-mentioned Acts, approved March 3, 1865.

B. The line of railroad (about 123.14/100 miles in length) from Sacramento to San Jose, to aid in the construction of which bonds were from time to time issued by the United States to the Western Pacific Railroad Company to the amount in the aggregate of one million nine hundred and seventy thousand five hundred and sixty dollars ($1,970,560) under and in pursuance of the provisions of the same acts of Congress under which bonds were issued to the Central Pacific Railroad Company of California, as above stated.

And, whereas, the said Central Pacific Railroad Company is also the owner of the following lines of railroad in the State of California with their appurtenances, which are known as and called the "Non-Bond-Aided Lines," viz.:

C. The line of railroad (about 24.31/100 miles in length) from Oakland to Niles.

6373 D. The line of railroad (about 146.8/100 miles in length) from Lathrop to Goshen.

E. The line of railroad (about 296.50/100 miles in length) from Roseville to the Oregon boundary;

And, whereas, the said "Bond-Aided Lines" of railroad are covered by the following mortgages and liens, viz:

First. The bond-aided line from Sacramento to the eastern boundary of California by the First Mortgage of the Central Pacific Railroad Company of California to D. O. Mills and William E. Barron, Trustees, dated July 25, 1865, under which bonds are now outstanding to the amount at their face value of six million three hundred and seventy-eight thousand dollars ($6,378,000), of which bonds to the amount of three million and seven thousand dollars ($3,007,000) are now overdue, and bonds to the amount of three million three hundred and seventy-one thousand dollars ($3,371,000) will mature December 1, 1899.

Second. The bond-aided line from the eastern boundary of California to a point about five miles west of Ogden by the First Mortgage of the Central Pacific Railroad Company of California to D. O. Mills and William E. Barron, Trustees, dated January 1, 1867, under which bonds are now outstanding to the amount at their face value of nineteen million five hundred and three thousand dollars ($19,503,000), of which bonds to the amount of eighty thousand dollars ($80,000) are now overdue, and bonds to the amount of three million nine hundred and eighty-eight thousand dollars

6374 ($3,988,000) will mature June 1, 1900, and bonds to the amount of fifteen million four hundred and thirty-five thousand dollars ($15,435,000) will mature June 1, 1901.

Third. The bond-aided line from Sacramento to San Jose by the First Mortgage of the Western Pacific Railroad Company to D. O. Mills and William E. Barron, Trustees, dated October 28, 1869, under which bonds are now outstanding to the amount at their face value of one million nine hundred and seventy thousand dollars ($1,970,000), and will mature July 1, 1899.

Fourth. The bond-aided line from a point about five miles west of Ogden to Sacramento by the statutory lien in favor of the United States under the acts of Congress, approved July 1, 1862, July 2, 1864, and March 3, 1865, above-mentioned, securing the balance of the indebtedness to the United States (amounting as of the date of this agreement, to the sum of $53,389,052.74), resulting from the issue of bonds to the Central Pacific Railroad Company of California as aforesaid to aid in the construction of said bond-aided line, such statutory lien being by said acts subordinate to the liens of the First Mortgages of the Central Pacific Railroad Company of California, described in the preceding subdivisions First and Second of this recital.

Fifth. The bond-aided line from Sacramento to San Jose by the statutory lien in favor of the United States under the Acts of Congress approved July 1, 1862, July 2, 1864, and March 3, 1865, above mentioned, securing the balance of the indebtedness to the United States (amounting as of the date of this agreement, to the sum
6375 of $5,423,662.74), resulting from the issue of bonds to the Western Pacific Railroad Company as aforesaid to aid in the construction of said bond-aided line, such statutory lien being by said act subordinate to the lien of the First Mortgage of the Western Pacific Railroad Company described in the preceding subdivision Third of this recital.

And, whereas, the said Non-Bond-Aided Lines of railroad are covered by the following mortgages and liens, viz:

First. The non-bond-aided line from Oakland to Niles by First Mortgage from the Western Pacific Railroad Company to D. O. Mills and William E. Barron, Trustees, dated October 28, 1869, under which bonds are now outstanding to the amount at their face value of seven hundred and sixty-five thousand dollars ($765,000), and will mature July 1, 1899.

Second. The non-bond-aided line from Lathrop to Goshen by First Mortgage from the Central Pacific Railroad Company to D. O. Mills and W. C. Ralston, Trustees, dated October 1, 1870, under which bonds are now outstanding to the amount at their face value of six million and eighty thousand dollars ($6,080,000) and will mature October 1, 1900.

Third. The non-bond-aided line from Roseville to the Oregon boundary by First Mortgage from the California and Oregon Railroad Company to David S. Dodge and Eugene Kelly, Trustees, dated January 1, 1868, and the supplemental mortgage from the Central Pacific Railroad Company as successor of the California and Oregon Railroad Company (by consolidation as aforesaid) to Eugene Kelly and Philo C. Calhoun, Trustees, dated January 1, 1872, under
6376 which last mentioned mortgages bonds are now outstanding to the amount at their face value of ten million three hundred and forty thousand dollars ($10,340,000), the date of maturity of such last mentioned bonds having been extended to January 1, 1918, by

virtue of extension agreements dated September 27, 1887, and September 25, 1891, respectively.

And, whereas, all the said bond-aided and non-bond-aided lines above referred to are further covered by Mortgage from the Central Pacific Railroad Company to the Metropolitan Trust Company of the City of New York, Trustee, dated April 1, 1889, under which there are now outstanding Fifty-year Five Per Cent. bonds of said Central Pacific Railroad Company maturing April 1, 1939, to the amount at their face value of twelve million two hundred and eighty-three thousand dollars ($12,283,000), of which bonds to the amount at their face value of $2,038,000 are now held by the Metropolitan Trust Company of the City of New York as security for the outstanding Land Bonds hereinafter mentioned.

And, whereas, it is claimed by the United States, but not conceded by the other parties hereto, that under and by virtue of the provisions of an Act entitled: "An act to alter and amend the act entitled: 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named act,
6377 approved May 7, 1878, the balances of indebtedness to the United States hereinbefore referred to amounting in the aggregate as of the date of this agreement to the sum of $58,812,715.48 are also secured by lien declared in said last-mentioned act upon all the railroad lines above mentioned whether aided or nonaided;

And, whereas, the lands granted to the Central Pacific Railroad Company of California, by the Act of Congress of July 1, 1862, above mentioned, and the lands granted to the California and Oregon Railroad Company by act of Congress approved July 25, 1866, with the exceptions and reservations mentioned in the mortgage hereinafter mentioned, were mortgaged by the Central Pacific Railroad Company to Charles Crocker and Silas W. Sanderson, by mortgage dated October 1, 1870, to secure an issue of land bonds of the Central Pacific Railroad Company which matured October 1, 1890, a part of which were by Extension Agreement dated September 4, 1890, extended to October 1, 1900, and of which there are now outstanding bonds to the amount at their face value of $2,134,000;

And, whereas, by Act of Congress entitled "An Act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30th, eighteen hundred and ninety eight, and for prior years and for other purposes," approved July 7, 1898, it was among other things provided as follows, viz: "That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, and their successors in office, be and they are hereby, appointed a commission with full power to settle the indebtedness
6378 to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific

bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: Provided, that any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding."

"That said commission shall not agree to accept a less sum in settlement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise. *And also provided*, That said commission are hereby empowered to grant such time or times of payment by installment, and at such rates of interest, to be not less than three per centum per annum, payable semi-annually, and with such security as to said commission may seem expedient. *Provided, however*, That in any settlement that may be made the final payment and full discharge of said indebtedness shall not be postponed to exceed ten years, and the whole amount, principal and interest, shall be paid in equal semi-annual installments within the period so limited, and in any settlement made it shall be provided that if default shall be made in any payment of either principal or interest or any part thereof then the whole sum and all installments, principal and interest shall immediately become due and payable, notwithstanding any other stipulation of said settlement: *Provided further*, That unless the settlement herein authorized be perfected within one year after the passage of this Act,
6379 the President of the United States shall at once proceed to foreclose all liens now held by the United States against said railroad companies and to collect the indebtedness herein sought to be settled, and nothing in this Act contained shall be held to waive or release any right, lien, or cause of action already held by the United States.

"That there is hereby appropriated out of any money in the Treasury, not otherwise appropriated, the sum of twenty thousand dollars to defray the expenses of said commission in making the said settlement."

And, whereas, it has been agreed by and between the Commission appointed by said Act and the owners of the railroads above described, that the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads should be settled upon the terms and in the manner hereinafter agreed to, subject to the approval of the President of the United States as provided in said last-mentioned Act.

And, whereas, Messrs. Speyer & Company, from time to time negotiated the sale of large amounts of the bonds secured by mortgage upon the railroads of the Central Pacific Railroad Company above mentioned, and are desirous of co-operating in a settlement of all matters relating to or affecting the indebtedness of said Company and the adjustment of its affairs.

And, whereas, of the First Mortgage Bonds of the Central Pacific Railroad Company of California secured upon the bond-aided lines above mentioned, and amounting in the aggregate, at their face value to twenty-five million eight hundred and eighty-one thou-
6380 sand dollars ($25,881,000), there have been already deposited and still remain on deposit subject to the order of Messrs. Speyer & Company, bonds to the amount at their face value of twenty-five million six hundred and thirteen thousand dollars (25,613,000) under a Bondholders Agreement, dated August 14, 1897, a copy whereof has been furnished to the party of the first part hereto.

And, whereas, of the Central Pacific Railroad Company's Fifty-Year Five Per Cent Bonds, issued under the mortgage to the Metropolitan Trust Company of the City of New York, dated April 1, 1889, above mentioned, amounting in the aggregate (after deducting said bonds so as aforesaid held as security for the said Land Bonds), to the sum of ten million two hundred and forty-five thousand dollars ($10,245,000), there have been deposited and still remain on deposit subject to the order of Messrs. Speyer & Company, bonds to the amount, at their face value, of eight million six hundred and eighty-six thousand dollars ($8,686,000) under a Bondholders Agreement, dated October 1, 1897, a copy whereof has been furnished to the party of the first part hereto.

And, whereas, the owners of the bonds deposited under each of the aforesaid agreements of August 14, 1897, and October 1, 1897, have thereby authorized Messrs. Speyer & Company, in their behalf, to negotiate with any other committees or representatives of holders of other securities of said Railroad Company, or with the Government of the United States, or otherwise, for participation in respect of the deposited bonds in any plan of readjustment or reorganization, or otherwise.

6381 And, whereas, there have been deposited with Committees consisting of F. G. Banbury, M. P., John B. Akroyd, Lord Alwyne Compton, M. P., Daniel Marks and Joseph Price, in London, and August Belmont, Hon. John G. Carlisle and George Coppell, in New York, under agreements, copies of which have been furnished to the party of the first part, certificates of the Capital Stock of the Central Pacific Railroad Company, to the amount, at their face value, of at least thirty-eight million four hundred and one thousand eight hundred dollars ($38,401,800) out of a total outstanding Capital Stock of said Company, amounting, at its par value, to sixty-seven million two hundred and seventy-five thousand five hundred dollars ($67,275,500), and the said Committees have authorized and requested the said Speyer & Company to negotiate, on their behalf, with the Commission appointed by the act of Congress, of July 7, 1898, above referred to, the basis of a settlement under and in pursuance of the said Act of the indebtedness to the United States growing out of the issue of bonds in aid of the construction of said Central Pacific and Western Pacific bond-aided railroads above mentioned:

Now, therefore, this agreement witnesseth, that in consideration of the premises, the parties hereto have undertaken, covenanted and agreed, and do hereby undertake, covenant and agree, to and with each other as follows, that is to say:

That the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads shall be, and it hereby is,
6382 settled upon the terms and in the manner following, that is to say:

FIRST.

The amount due the United States, being the full amount of the principal and interest, and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise, is hereby found and agreed to be, on the day of the date of this agreement, the sum of fifty-eight million eight hundred and twelve thousand seven hundred and fifteen dollars and forty-eight cents ($58,812,715.48).

SECOND.

Within thirty days after this settlement shall become binding, by the submission thereof in writing to the President, and his approval thereof, the Central Pacific Railroad Company shall deliver to the Treasurer of the United States its twenty promissory notes, bearing even date herewith, payable respectively on or before the expiration of each successive six months for ten years, counting from the date of this agreement, each note being for one-twentieth of the foregoing sum of $58,812,715.48, and bearing interest at the rate of three per cent. per annum, payable semi-annually.

Provided, however, that if default shall be made in any payment of either principal or interest of any of said notes or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of this agreement of settlement.

Each of the said notes shall be in the following form, viz.:

6383 $2,940,635.78.

SAN FRANCISCO, CAL., *February 1, 1899.*

On or before _____ the Central Pacific Railroad Company will pay to the order of the United States of America two million nine hundred and forty thousand six hundred and thirty-five 78/100 dollars, with interest meantime at the rate of three per cent. per annum, payable semi-annually, for value received.

This is one of a series of twenty notes given by said Railroad Company to the United States of America, each for the same principal sum and bearing interest at the same rate but maturing at different dates, that is to say, on or before the expiration of each successive

six months for ten years counting from the date hereof. If default shall be made in any payment of either principal or interest of any of said notes or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable.

THIRD.

The payment of the principal and interest of the said notes and of the indebtedness represented thereby, shall be secured by the pledge of $58,820,000, face value, First Refunding Mortgage Four Per Cent. Gold Bonds issued by the Central Pacific Railroad Company, or its successor company having title to the aforesaid railroads, such bonds to be part of an issue hereinafter described not exceeding $100,000,000 in all, one-twentieth part of such pledged bonds to be held as security for each of said notes.

6384

FOURTH.

The said Refunding Bonds so to be pledged as security for the payment of the said notes and interest shall be delivered to the Treasurer of the United States within a reasonable time after this settlement becomes binding, for obtaining the deposit of securities, the assent of security owners and the carrying out of such plan of reorganization or readjustment as may be necessary to enable the Central Pacific Railroad Company, or its successor company, to isssue said Refunding Bonds and make the mortgage to secure the same a valid lien upon the railroads aforesaid in accordance with the requirements herein expressed. A period of ten months from the delivery of said notes is hereby declared to be *prima facie* such reasonable time, but the Central Pacific Railroad Company agrees to use its best efforts to perfect such mortgage and deliver such bonds before the expiration of that time: and, on the other hand, should such reorganization or readjustment be delayed by the pendency of judicial proceedings for the purpose of enabling the company which is to make the new mortgage to execute and deliver Refunding Bonds secured as provided herein or be delayed by adverse litigation, such period is to be correspondingly extended; provided, however, that such period shall not be extended for any cause whatever for more than three years from the date of this agreement, except with the written approval of the President of the United States.

If default shall be made in the delivery of the said bonds so to be pledged within the period hereinabove prescribed for such de-
6385 livery thereof, including any extension which there may have been under the foregoing provisions, then the whole amount of the said notes then outstanding, principal and interest, shall immediately become due and payable.

The said First Refunding Mortgage Four Per Cent. Gold Bonds referred to in Article Third and this Article of this Agreement are to run for at least forty-five years, and to bear interest at the rate

of four per cent. per annum, payable semiannually, and are to be payable, principal and interest, in gold coin of the United States, and are to be a part of an issue not exceeding one hundred million dollars face value secured by mortgage upon all the railroads, equipment and terminals now owned by the Central Pacific Railroad Company. Such mortgage shall be the first lien upon the said railroads, equipment and terminals, or shall be secured by deposit as collateral security therefor of at least ninety per cent. of the now outstanding First Mortgage Bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company referred to in paragraphs First, Second and Third in the recitals to this agreement describing the mortgages and liens on "Bond-Aided Lines," and of at least seventy-five per cent. of the aggregate of all now outstanding bonds of the Central Pacific Railroad Company and of all now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such First Mortgage Bonds of the Central Pacific Railroad Company of California, and Western Pacific Railroad Company. In making such computation as to the amount of deposited bonds, it is agreed that the $2,038,000 Fifty-Year
6386 Five Per Cent. Bonds held as security for the outstanding Land Bonds, as above stated, shall not be counted as outstanding bonds. If any of the mortgages now securing any of the outstanding bonds aforesaid (other than the mortgage securing the Land Bonds, dated October 1, 1870, above referred to) shall be satisfied and discharged, such satisfaction and discharge thereof shall be deemed to be the equivalent of the deposit of all outstanding bonds now secured thereby as security for the said Refunding Bonds. The satisfaction and discharge of the said mortgage securing the Land Bonds, dated October 1, 1870, shall be deemed to be the equivalent of the deposit as security for said Refunding Bonds of all bonds now secured by that mortgage; provided, that the $2,038,000 Fifty-Year Five Per Cent. Bonds held as security for such Land Bonds shall either be cancelled or deposited as security for such Refunding Bonds.

The mortgage securing such Refunding Bonds shall be prior in lien to any lease of the railroads of said Central Pacific Railroad Company or their appurtenances or any portion thereof, and shall be in the form agreed upon by the parties hereto, and now identified by the signature of the Attorney-General of the United States, unless the form thereof should be hereafter modified with the consent of the Attorney-General of the United States and the party of the second part, or its successor company, and the party of the third part hereto.

Upon the satisfaction of record of any existing mortgage any securities or funds held in any sinking fund created or exist-
6387 ing by or under any such mortgage shall be surrendered to the Railroad Company or its successor company.

The lands granted to the Central Pacific Railroad Company of California and to the California and Oregon Railroad Company

as above stated are not to be covered by the mortgage securing such Refunding Bonds. Until the delivery to the Treasurer of the United States of the Refunding Bonds to be pledged to it under Article Third hereof, secured as aforesaid, all rights of the United States in respect to said granted lands shall remain in full force and effect, but shall not be enforced unless the Central Pacific Railroad Company, or its successor company, shall make default under this agreement; and upon such delivery of said Refunding Bonds secured as aforesaid, all rights, interest and claims of the United States in, to, and in respect to, such lands shall cease and determine.

From time to time, as the principal or any part of the principal of said notes shall be paid, the United States or other holders of said notes shall return to said Railroad Company or its successors an equal amount at their face value of the said Refunding Bonds with all unmatured coupons appertaining thereto; and, as interest shall be paid upon said notes, the United States or other holders of said notes shall detach and return to said Railroad Company or its successors the coupons appertaining to said bonds representing interest thereon to the date to which interest shall have been paid upon said notes, which coupons shall thereupon be forthwith canceled.

FIFTH.

Until the Refunding Bonds hereinbefore provided for se-
6388 cured as aforesaid shall have been delivered to the Treasurer of the United States as security for the said notes, the lien in favor of the United States, reserved in the acts of Congress above mentioned to secure the repayment to the United States of the above-mentioned indebtedness, as such lien now exists, shall remain in full force and effect to the extent of such indebtedness as security for the notes representing such indebtedness; and nothing herein contained shall be deemed to prevent the United States from intervening for the protection of its said lien in any legal proceedings brought to foreclose any lien on said railroads or any part thereof or otherwise.

When the Central Pacific Railroad Company or its successor company shall have delivered to the Treasurer of the United States said Refunding Bonds secured as aforesaid, then the lien in favor of the United States above referred to, as then existing, shall immediately vest in, and it is hereby, upon the happening of that event, transferred to, the Trustee of the mortgage securing such Refunding Bonds as security for the entire issue of such bonds.

SIXTH.

Until the notes to be given by the Central Pacific Railroad Company under Article Second of this agreement shall have been paid in full, principal and interest, all amounts due to the Central Pacific Railroad Company, or its successor company from the United States subsequent to the date of this agreement in respect of services to the

United States, upon the bond-aided lines from a point about five miles west of Ogden to Sacramento and from Sacramento to San Jose above referred to shall, as audited and allowed, be
6389 applied by the United States *pro rata* on account of the amounts remaining unpaid on such of said notes as shall not have been purchased by Messrs. Speyer & Co. hereunder, such application being first made to the payment of accrued interest thereon and thereafter on account of the principal thereof.

SEVENTH.

Messrs. Speyer & Company, within one month after the delivery to the United States of the notes referred to in Article Second hereof, will, against delivery to them of the four earliest maturing notes, endorsed to their order by the Secretary of the Treasury on behalf of the United States without recourse to it, pay to the United States the face value of such notes, viz: Eleven million seven hundred and sixty-two thousand five hundred and forty-three dollars and twelve cents, ($11,762,543.12) with accrued interest thereon to date of payment. From and after the time when such payment shall have been made by Messrs. Speyer & Company, they shall, until the delivery of such Refunding Bonds, be entitled to share *pro rata* with the United States in the lien and all proceeds of the lien in favor of the United States to secure the indebtedness above referred to. Upon delivery of the said Refunding Bonds, Messrs. Speyer & Company shall be entitled to receive such Bonds to the amount, at their face value, of the principal of said notes then remaining unpaid which are then held by said Speyer & Company.

Within ten days after the maturity of each of said notes held by Messrs. Speyer & Company, the said Speyer & Company shall notify the Secretary of the Treasury of the United States
6390 whether such matured note and the matured interest on all the notes held by them have been paid to them or not.

Until the Refunding Bonds hereinbefore provided for secured as aforesaid shall have been delivered to the Treasurer of the United States as security for the said notes, all rights of the United States in or to or in respect of the said lien, and in or to or in respect of the lands granted as aforesaid, shall remain unaffected by the transfer of the said notes to Speyer & Company, and all right and title of the United States in the said lien, and in respect of the said lands, shall be deemed to continue in the United States as fully as if the said notes remained in its possession and ownership, save only that the said right and title shall be deemed to be held by the United States for the *pro rata* benefit of itself and said Speyer and Company, and the United States may bring and maintain any and all actions, suits and proceedings which it might have brought or maintained, and may do any and all acts and things which it might have done had all the said notes remained in its possession and ownership, provided that all recoveries, benefits and advantages derived or obtained through or by means of such actions, suits, proceedings and acts for the enforcement

of such lien and rights, shall inure to the *pro rata* benefit of the United States and said Speyer and Company. In case of any default in payment of the principal or interest of any of said notes, the United States will thereupon proceed for the enforcement of the said lien.

In witness whereof, this agreement has been executed on
6391 behalf of the United States of America by Honorable Lyman J. Gage, Secretary of the Treasury, Honorable Cornelius N. Bliss, Secretary of the Interior and Honorable John W. Griggs, Attorney-General, appointed by the Act of Congress a Commission as hereabove stated; by the Central Pacific Railroad Company by its President and under its corporate seal attested by its Secretary; and by Messrs. Speyer & Company under their hands the day and year first above written. Executed in triplicate.

LYMAN J. GAGE,
Secretary of the Treasury.
CORNELIUS N. BLISS,
Secretary of the Interior.
JOHN W. GRIGGS,
Attorney General.

Approved:
WILLIAM MCKINLEY.

CENTRAL PACIFIC RAILROAD COMPANY,
By ISAAC L. REQUA, *President.*
(Central Pacific Railroad Company Seal.)
Attest:
W. M. THOMPSON, *Secretary.*
SPEYER & CO.

6392 Mr. LOVETT. I next offer in evidence Defendants' Exhibit 37, being, first, a notice to the holders of bonds and shares of Central Pacific Railroad Company, dated February 20, 1899; second, plan of readjustment, dated February 8, 1899; and, third, copy of readjustment agreement, dated February 8, 1899.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 37 is as follows:

DEFENDANTS' EXHIBIT 37.

CENTRAL PACIFIC RAILROAD COMPANY.

Plan and Agreement of Readjustment Dated February 8, 1899.

READJUSTMENT MANAGERS.

Speyer & Co., New York.
Laz. Speyer Ellissen,
Frankfort o/ Main,
Deutsche Bank, Berlin.
Speyer Brothers, London.
Teixeira De Mattos Brothers,
Amsterdam.

COUNSEL TO READJUSTMENT MANAGERS.

Seward, Guthrie & Steele,
40 Wall Street, N. Y.

Evarts, Choate & Beaman,
52 Wall Street, N. Y.

DEPOSITARY.

Speyer & Co., New York.

CUSTODIAN OF SECURITIES.

Central Trust Company of New York.

6393 CENTRAL PACIFIC RAILROAD COMPANY READJUSTMENT.

To the Holders of the Bonds and Shares of the Central Pacific Railroad Company:

At the request of holders of large amounts of bonds and shares of the Central Pacific Railroad Company, Messrs Speyer & Co., of New York, have negotiated with the United States Government a settlement of its claim against the Central Pacific Railroad Company as set forth in an agreement dated February 1, 1899, which has been accepted by the Railroad Company.

The balance of the indebtedness due to the United States, as of February 1, 1899, as therein stated, amounted, principal and interest, to $58,812,715.48. The agreement provides for the payment by the Railroad Company of the whole of this indebtedness within ten years, in equal semi-annual installments, with interest meanwhile at the rate of three per cent. per annum, payable semi-annually. These payments are to be evidenced by twenty notes of the Central Pacific Railroad Company falling due, one every six months, beginning August 1, 1899. These notes are to be secured by an equal amount at face value of new First Refunding Mortgage Four Per Cent. Gold Bonds, part of a total authorized issue of $100,000,000. These bonds are to be delivered as soon as practicable, and meantime, the existing lien of the United States is to remain in force as security for the indebtedness.

In order to create these new First Refunding Mortgage Gold
6394 Bonds, it is expedient to promptly readjust the financial affairs of the Central Pacific Railroad Company.

With this end in view, the undersigned have formulated the accompanying Plan and Agreement of Readjustment, dated February 8, 1899, and have agreed to act as Readjustment Managers, as stated therein. A syndicate has been formed by the undersigned to provide all the cash requirements under the plan.

The Central Pacific R. R. Co. London Shareholders' Committee, of which F. G. Banbury, Esq., M. P., is Chairman, representing a majority of the outstanding shares, has entered into an agreement with the Southern Pacific Company and the Readjustment Managers, providing, among other things, for the purchase by the Southern Pacific Company upon the terms and conditions specified in such agreement, of said shares or the new shares to be issued therefor under the Plan. The shares held by the Shareholders' Committee have been deposited with the Readjustment Managers under said plan of readjustment and agreement of sale, and the privilege has been reserved to the other shareholders, who shall deposit their shares under the Plan, and also make the cash payment in respect thereof as therein provided, to sell their shares, to the Southern Pacific Company upon the same terms, provided they avail themselves of such privilege within the period to be prescribed by the Readjustment Managers for the purpose. Unless shareholders at the time of depositing their share certificates shall notify the Depositary of their election not to sell to the Southern Pacific Company
6395 and shall have their Readjustment Certificates of Deposit then stamped "non-assented," the undersigned will hold the deposited shares of stock subject to such agreement of sale with the Southern Pacific Company, and will deliver such shares or the corresponding new shares when issued, to such Company in exchange for the securities to be given as the purchase price thereof.

The undersigned believe the Readjustment proposed, advantageous to the holders of the bonds and shares of the Central Pacific Railroad Company, and they urge prompt acceptance and deposit of securities.

Copies of the Agreements with the United States Government and with the Southern Pacific Company and also copies of the Plan and Agreement of Readjustment may be obtained on application at the offices of the undersigned.

February 20, 1899.

SPEYER & Co., *New York.*
SPEYER BROTHERS, *London.*
LAZ. SPEYER ELLISSEN, *Frankfort o/Main.*
TEIXEIRA DE MATTOS BROTHERS, *Amsterdam.*
DEUTSCHE BANK, *Berlin.*

6396 CENTRAL PACIFIC RAILROAD COMPANY.

PLAN OF READJUSTMENT.

Conditions of participation.

Participation under this Plan of Readjustment in any respect whatsoever is dependent upon the deposit of securities with Speyer & Co., of New York, the Depositary named in the Readjustment Agreement, either at their office, No. 30 Broad Street, in the City

of New York, or at the offices of Speyer Brothers, London; Laz. Speyer Ellissen, Frankfort o/Main; Teixeira de Mattos Brothers, Amsterdam, and the Deutsche Bank, Berlin, acting as agents for the Depositary under this Plan. The Plan will embrace only securities so deposited within such time as may be fixed by notice. No securities will be received on deposit unless in negotiable form, and bonds must carry all coupons maturing after February 1, 1899. The word securities whenever used in this Plan shall include stocks as well as bonds and coupons.

Pursuant to the offer of the Syndicate hereinafter mentioned, nolders of the Common Stock of the Central Pacific Railroad Company may purchase from the Syndicate the new Common Stock, or become entitled to receive the other benefits accruing to depositors of the present Common Stock under the Plan, by depositing their old stock with Messrs. Speyer & Co., or the firms acting as their agents in Europe for that purpose on the following terms: As consideration for shares of the New Company, or such other securities and
6397 benefits as may be provided in lieu thereof, the depositors of Common Stock must pay $2.00 per share deposited, and will thereupon be entitled, on the completion of the Readjustment, to receive $100 in new Common Stock or such other securities and benefits as may be provided in lieu thereof.

The payments by depositors of such Common Stock must be made for account of the Syndicate at the offices of Speyer & Co., in New York, or the firms acting as their agents in Europe for that purpose, when and as called for by advertisement published at least twice a week for two successive weeks in at least two of the daily newspapers of general circulation published in the cities of New York, London, Frankfort o/ Main, Amsterdam and Berlin, respectively. All payments must be receipted for by or on behalf of the depositary on the Certificates of Deposit. Failure to make such payment when and as payable will subject the deposited stock and all rights therein, or in respect thereof, to forfeiture to the Syndicate as provided in the Readjustment Agreement.

The Depositary will issue proper Receipts or Certificates of Deposit for all securities deposited. Deposited securities will be placed with the Central Trust Company of New York, or its agents in Europe, as custodian.

The following bonds and stock may be deposited on the terms hereinafter provided:

Central Pacific Railroad Company of California First Mortgage Bonds, Series A, B, C, D, E, F, G, H and I.

Western Pacific Railroad Company First Mortgage Bonds, Series A and B.

6398 California and Oregon Railroad Company and Central Pacific Railroad Company, successor, First Mortgage Bonds, Series A and B, Central Pacific Railroad Company (San Joaquin Valley Branch) First Mortgage Bonds.

Central Pacific Railroad Company Land Bonds.

Central Pacific Railroad Company Fifty-Year Six Per Cent. Bonds.

Central Pacific Railroad Company Fifty-Year Five Per Cent. Bonds.

Central Pacific Railroad Company Common Stock.

NEW RAILROAD COMPANY.

Unless the Readjustment Managers shall decide to proceed without foreclosure or sale, the various properties will be sold under foreclosure of one or more of the existing mortgages, or otherwise dealt with, and a successor company or companies will be organized. The term "New Company," as hereinafter used, is intended to mean either the existing Company or the new proprietary company or companies which may be organized.

DEPOSITED SECURITIES.

The securities deposited hereunder will be held by the Depositary subject to the order and control of the Readjustment Managers as provided in the Readjustment Agreement.

All securities deposited under the Plan are to be kept alive so long as deemed necessary by the Readjustment Managers for the purposes of readjustment or the protection of the New Company or its security holders.

Interest from the respective due dates of the last matured coupons prior to February 1, 1899, at the same rates, will be paid in cash, upon the completion of the readjustment, on all deposited bonds up to August 1, 1899.

6399 The Readjustment Managers may collect from the Railroad Company any interest on deposited bonds, and at their option may pay over the amounts so collected, or any part thereof, to the holders of the Certificates of Deposit for such bonds. In case such payments are made, the Certificates of Deposit will be stamped accordingly.

The Syndicate has agreed to purchase for cash, when and so soon as the Plan is declared operative, all of the following existing bonds at the prices stated:

$25,881,000 Central Pacific Railroad Company, of California, First Mortgage Bonds, Series A, B, C, D, E, F, G, H and I. $2,735,000 Western Pacific Railroad Company First Mortgage Bonds, Series A and B. $6,080,000 Central Pacific Railroad Company (San Joaquin Valley Branch) First Mortgage Bonds. $2,134,000 Central Pacific Railroad Company Land Bonds.	At the price of par and accrued interest in New York.
$56,000 Central Pacific Railroad Company Fifty-Year Six Per Cent. Bonds. $10,245,000 Central Pacific Railroad Company Fifty-Year Five Per Cent. Bonds.	At the price of 105 and accrued interest in New York.
$10,340,000 California and Oregon Railroad Company and Central Pacific Railroad Company, Successor, First Mortgage Bonds, Series A and B.	At the price of 109 and accrued interest in New York.

6400 Holders of above bonds who prefer to accept cash rather than to take the new securities provided in the Plan, must signify their election to take cash when depositing their securities, within such time as may be fixed by notice, by having their Certificates of Deposit stamped accordingly by the Depositary or any of the firms acting as their agents in Europe, above mentioned, and will thereupon be entitled to receive the said cash payment therefor at the time that the Plan is declared operative, and upon surrender of the Certificates of Deposit so stamped.

SETTLEMENT WITH UNITED STATES GOVERNMENT.

The Company has entered into an agreement, dated February 1, 1899, with the United States Government and with Messrs. Speyer & Co. which provides in substance as follows:

The balance of the indebtedness due to the United States as of February 1, 1899, amounted, principal and interest, to $58,812,715.48. The agreement provides for the payment by the Railroad Company or its successor of the whole of this indebtedness within ten years in equal semi-annual installments, with interest meanwhile at the rate of three per cent. per annum, payable semi-annually. These payments are to be evidenced by twenty notes of the Railroad Company, falling due, one every six months beginning August 1, 1899, which are to be delivered within thirty days after said agreement of settlement becomes effective, and are to be secured by an equal amount at face value of the new First Refunding Mortgage Four Per Cent. Gold Bonds hereinafter described, which bonds are to be delivered to
6401 the United States, as provided in said agreement, as soon as practicable after delivery of said notes. In case of default in payment of interest or principal of any of said notes, or of failure to deliver the First Refunding Mortgage Four Per Cent. Gold Bonds within the time limited in said agreement of settlement, the whole amount of said notes then outstanding will become immediately due and payable. Messrs. Speyer & Co. have agreed to purchase the $11,762,543.12 of said notes earliest maturing, so that the amount of said First Refunding Mortgage Four Per Cent. Gold Bonds to be retained as collateral by the United States will be $47,056,000, par value, thereof.

NEW STOCKS AND BONDS.

The New Company is to authorize the following securities:

FIRST.

$100,000,000 First Refunding Mortgage Four Per Cent. Gold Bonds.

To run not less than forty-five years.

These bonds will bear interest from August 1, 1899, free of taxes, and are to be secured by a mortgage upon all the railroads, terminals

and equipment (see Table A, page 10) now owned by the Central Pacific Railroad Company covering about 1349 miles of first track and about 365 miles of second track and sidings, or shall be secured by deposit as collateral security therefor of at least ninety per cent. of the present outstanding First Mortgage Bonds of the Central Pacific Railroad Company of California, and the Western Pacific Railroad Company above mentioned, and of at least seventy-five per cent. of the aggregate of all the now outstanding bonds of the Central Pacific Railroad Company and of all now outstanding bonds of
6402 the divisional companies by the consolidation whereof it was formed, including such First Mortgage Bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company. In computing the amount of deposited bonds, the $2,038,000 Fifty-Year Five Per Cent. Bonds held as security for the outstanding Land Bonds shall not be counted as outstanding bonds. If any of the mortgages now securing any of the outstanding bonds aforesaid (other than the first mortgage securing the Land Bonds dated October 1, 1870, above referred to) shall be satisfied and discharged, such satisfaction and discharge thereof shall be deemed to be the equivalent of the deposit, as security for the said Refunding Bonds, of all outstanding bonds now secured by the mortgage so satisfied and discharged. The satisfaction and discharge of the said mortgage securing the Land Bonds, dated October 1, 1870, shall be deemed to be the equivalent of the deposit as security for said Refunding Bonds of all bonds now secured by that mortgage, provided that the $2,038,000 Fifty-Year Five Per Cent. Bonds held as security for such Land Bonds shall either be canceled or deposited as security for such Refunding Bonds.

$47,056,000 of these bonds will be retained by the United States Government as collateral security for the $47,050,172.48 of the 3 Per Cent. Notes of the Central Pacific Railroad Company above mentioned remaining in its possession. As these notes are paid, an equivalent amount of these bonds will be returned to the Railroad Company, and the mortgage will provide that they may then be reissued at the same or a lower rate of interest if the Railroad Company shall
6403 deem it expedient. In no event is the total amount of bonds outstanding at any one time under this mortgage to exceed $100,000,000, and a sufficient amount of bonds will be reserved to take up underlying bonds as provided in this Plan, page 7.

The First Refunding Mortgage Bonds are to be applied as follows:

To be retained by the United States Government as collateral for Three Per Cent. Notes	$47,056,000
In partial exchange for existing bonds (see page 7)	51,253,500
Purchased by Syndicate to provide cash requirements of Plan (see page 8)	1,690,500
	$100,000,000

SECOND.

$25,000,000 Three and One-Half Per Cent. Mortgage Gold Bonds, to Run Thirty Years.

These bonds will bear interest from August 1, 1899, free of taxes, and are to be secured by a mortgage upon all the railroads and properties covered by the First Refunding Mortgage above mentioned (subject, however, to the prior lien of such First Refunding Mortgage), and also by deposit with the Trustee under such mortgage, as acquired, of all securities and moneys now or hereafter held in any sinking fund created or existing by or under any now existing mortgage of the present Central Pacific Railroad Company or any divisional Railroad Company by the consolidation whereof it was formed (see Table B, page 11); and to be also secured by a Trust Deed upon all the lands now covered by the mortgage, securing the Land Bonds of the present Central Pacific Railroad Company,
6404 dated October 1, 1870, (except in so far as the same shall be released from lien of said last-mentioned mortgage in accordance with its provisions before such mortgage is satisfied and discharged); and also upon all notes given in payment for lands covered by such mortgage securing said Land Bonds which shall be outstanding at the time when such last-mentioned mortgage is satisfied and discharged (see Table C, page 12). All income derived from said Sinking Fund Securities or from said lands is to be applied primarily to the payment of the current interest on said Three and One-Half Per Cent. Mortgage Gold Bonds, and after such current interest shall have been paid or provided for, to the payment of any fixed charges of the Railroad Company which may be secured by lien, prior to the lien of said Three and One-Half Per Cent. Mortgage, upon its properties or any of them (including interest on the said Three Per Cent. Notes in favor of the United States above mentioned); but the Railroad Company, at its discretion, so long as no default exists in respect to principal or interest on said Three and One-Half Per Cent. Mortgage Gold Bonds, may at any time, or from time to time, sell such securities or lands and apply the proceeds thereof, or any moneys held as security for such Three and One-Half Per Cent. Mortgage Gold Bonds (other than the income above referred to), to the purchase and cancellation of said Three and One-Half Per Cent. Mortgage Gold Bonds while the same shall be purchasable at not above par and accrued interest; otherwise, to the purchase and cancellation, at the discretion of the Railroad Company,
either of the Three and One-Half Per Cent. Mortgage Gold
6405 Bonds or of the First Refunding Mortgage Four Per Cent. Gold Bonds or of bonds secured by prior lien upon its properties. All proceeds of or collections from notes given in payment for lands covered by the mortgage securing the Land Bonds of the Central Pacific Railroad Company, dated October 1, 1870, which may remain unpaid at the time of the satisfaction or discharge of said

mortgage securing said Land Bonds, are to be applied in the same manner as above provided in respect to the proceeds of sinking-fund securities and lands. Suitable provision will be made that no other new mortgage (except to refund such First Refunding Mortgage Four Per Cent. Gold Bonds or said Three and One-Half Per Cent. Mortgage Gold Bonds) is to be made upon the properties covered by the mortgage securing said First Refunding Mortgage Four Per Cent. Gold Bonds, or said Three and One-Half Per Cent. Mortgage Gold Bonds, so long as any of such bonds of either class or any of the Four Per Cent Gold Bonds of the Southern Pacific Company, hereinafter referred to, are outstanding; and that no other new mortgage is to be made by the Railroad Company upon said properties except with the assent of the holders of seventy-five per cent. of the Preferred Stock and a majority of the Common Stock at the time outstanding.

The Three and One-Half Per Cent. Mortgage Gold Bonds are to be applied as follows:

In partial exchange for existing bonds (see page 7)	$13,695,000
Purchased by Syndicate to provide cash requirements of Plan (see page 8)	11,305,000
	$25,000,000

6406

THIRD.

$20,000,000 Four Per Cent. Cumulative Preferred Stock.

This stock will be entitled to cumulative dividends up to 4 per cent. per annum, gold, payable semi-annually, beginning from August 1, 1899, before payment of any dividend on the Common Stock, thereafter, dividends up to 4 per cent. per annum to be paid on the Common Stock, and the balance of dividends to be paid pro rata upon Preferred and Common Stock. The Preferred Stock will be preferred as to capital towards the Common Stock on any liquidation or dissolution of the Company.

Suitable provision is to be made that no additional mortgage shall be put upon the property to be acquired by the New Company hereunder and that no increase in the amount of the preferred stock authorized under this Plan shall be made except in each instance after obtaining the consent of the holders of 75 per cent. of the whole amount of Preferred Stock and a majority of the whole amount of Common Stock at the time outstanding.

This Preferred Stock will be applied as follows:

To Southern Pacific Company in consideration of the issue of an equal amount at par value of the Southern Pacific Company's Four Per Cent. Gold Bonds hereinafter mentioned, such bonds, after providing for requirements of the Readjustment, to be applied only to betterments and additions to the Railroad Company's properties	$12,000,000
To Southern Pacific Company in consideration of the issue of an equal amount at par value of its said Four Per Cent. Gold Bonds, to be used to provide additional funds, if required, for the payment of said Three Per Cent. Notes to the United States, and thereafter to be applied only for betterments and additions to the Railroad Company's properties	$3,000,000

6407

Reserved to be issued from time to time to an equal amount at par value in consideration of the issue of $5,000,000 of said Southern Pacific Company's Four Per Cent. Gold Bonds for betterments and additions to the Railroad Company's properties (such bonds to be issued at the rate of not exceeding $200,000 par value thereof per annum)	$5,000,000
	$20,000,000

FOURTH.

$67,275,500 Common Stock.

This stock will be applied as follows:

Sold to Syndicate and offered for sale to depositors of present Common Stock (see page 1)	$67,275,500

Pursuant to an agreement made between the Central Pacific R. R. Co., London Shareholders' Committee, the Readjustment Managers and the Southern Pacific Company, that Company has offered to purchase all of the existing Common Stock deposited under the Plan or the new Common Stock which the Readjustment Managers shall be authorized to sell as herein provided upon substantially the following terms:

The holders of Certificates of Deposit for existing Common Stock of the Railroad Company, who shall make the cash payment of $2.00 per share deposited as hereinbefore provided, to receive, in exchange for their stock, Common Stock of the Southern
6408 Pacific Company, share for share, and also twenty-five per cent. of the par value of their stock in the new Four Per Cent. Gold Bonds of the Southern Pacific Company, to be secured by a collateral trust mortgage as stated below.

Unless stockholders at the time of depositing their Stock Certificates shall notify the Depositary of their election not to sell their deposited stock, or the new Common Stock to be issued therefor, to the Southern Pacific Company upon the terms above stated, and shall at the same time have their Readjustment Certificates of Deposit stamped "non-assented," such depositing holders will be deemed to have authorized the sale of their stock to the Southern Pacific Company upon said terms, and such deposited stock or the corresponding new stock when issued, will accordingly be delivered to the Southern Pacific Company in exchange for the above named securities to be given as the purchase price thereof.

In case the Readjustment Managers shall determine to proceed without foreclosure, the new Common Stock will not be issued, but the existing Common Stock deposited under the Plan (excepting stock represented by Certificates of Deposit stamped "non-assented") will be sold to the Southern Pacific Company upon the terms above mentioned, and the holders of Certificates of Deposit therefor who have made the cash payment in respect thereof, as hereinbefore provided, shall be entitled to receive the new securities to be paid by the Southern Pacific Company as the purchase price thereof.

Copies of the said agreement with the Southern Pacific Company may be obtained at the office of the Depositary or any of the Managers.

6409 AGREEMENT AND GUARANTIES OF THE SOUTHERN PACIFIC COMPANY.

Under the said agreement the Southern Pacific Company agrees that it will, at the time and in the manner therein provided, issue its Four Per Cent. Gold Bonds (aggregating $36,819,000 face value) as follows:

Such Four Per Cent. Gold Bonds shall bear interest at the rate of four per cent. per annum from August 1, 1899, free of taxes, and have fifty years to run (but subject to redemption at any time, at the option of the Southern Pacific Company, at par and accrued interest, upon six months' notice by publication). Such bonds shall be issued only to the following amounts:

In part payment of the purchase price under the Plan of the Common Stock of the Railroad Company, being one-fourth of the par value thereof	$16,819,000
In consideration of the issue of the new Preferred Stock of the Railroad Company as above stated	15,000,000
Reserve to be issued only for betterments or additions to the Railroad Company's properties at the rate of not exceeding $200,000 par value thereof per annum, against the issue of an equal amount at par value of the new Preferred Stock	5,000,000
	$36,819,000

The said Four Per Cent. Gold Bonds are to be secured by a Collateral Trust Mortgage covering the $12,000,000 of new Preferred Stock presently issued, and the additional $8,000,000 of such Preferred Stock as and when the same shall be issued and delivered; and also, all the Common Stock of the Railroad Company, pur-
6410 chased by the Southern Pacific Company. Said Collateral Trust Mortgage shall contain suitable provisions for the protection of the holders of bonds secured thereby, and shall authorize the trustee under said mortgage to sell the stocks of the Railroad Company covered thereby in case of six months' default in payment of the principal or interest of said Four Per Cent. Bonds of the Southern Pacific Company. Suitable provisions will also be made that so long as any of said Four Per Cent. Gold Bonds of the Southern Pacific Company remain outstanding neither the Preferred nor Common Stock of the Railroad Company shall be increased beyond the amounts hereinbefore mentioned respectively, unless arrangements have been made for depositing under said Collateral Trust Mortgage the same proportionate part of such increase of each class of stock as the stock of such class theretofore covered by such mortgage was of the whole outstanding stock of such class as the same existed before such increase; and also that the said Railroad Company shall not be merged or consolidated with any other Railroad Company without the consent of the holders of the majority in amount of such Four Per Cent. Gold Bonds of the Southern Pacific Company then outstanding.

The Southern Pacific Company further agrees that upon delivery to it of said $12,000,000 of new Preferred Stock, and at least 377,194 shares of the Common Stock of the Railroad Company, it will simultaneously, by appropriate written instruments endorsed thereon, guarantee unconditionally the payment of the principal and interest, as they shall severally mature, of the First Refunding Mortgage Four Per Cent. Gold Bonds at the rate of four per cent. per annum, and of the Three and One-Half Per Cent. Mortgage Gold
6411 Bonds at the rate of three and one-half per cent. per annum, payable in gold, free of taxes, beginning from August 1, 1899.

APPLICATION OF NEW SECURITIES.

It is contemplated that, as a consideration for the property and securities to be conveyed and delivered to the New Company, or which it shall acquire pursuant to the Plan, it shall deliver the new bonds and stock, excepting such final amounts as shall be reserved for the future use of the New Company and such amounts as are deliverable directly to the United States Government as hereinbefore provided. The requisite deliveries of the new securities to depositors and subscribers under the Plan will thus be provided for.

The following details show the disposition to be made under the Plan of the securities of the New Company:

TABLE

Showing Amount of Cash and New Securities which Deposited Securities will be Entitled to Receive on Completion of Readjustment.

Existing Bonds and Stock to be Deposited.	Each $1,000 Receives—		
	Cash.†	New 4 % First Refunding Mortgage Gold Bonds.	New 3½ % Mortgage Gold Bonds.
Central Pacific Railroad Company of California: First Mortgage Bonds, Series A	$33.33	$1,000	$50
Series B, C, D, E, F, G, H, and I	29.17	1,000	50
6412 Western Pacific Railroad Company First Mortgage Bonds, Series A and B	35.00	1,000	50
Central Pacific Railroad Company (San Joaquin Valley Branch) First Mortgage Bonds	50.00	1,000	75
Central Pacific Railroad Company Land Bonds	41.67	500	700
Central Pacific Railroad Company Fifty-Year 6 % Bonds	50.00	500	900
Central Pacific Railroad Company Fifty-Year 5 % Bonds	41.67	500	800
California and Oregon Railroad Company and Central Pacific Railroad Company, successor, First Mortgage Bonds, series A and B	29.17	1,000	200

† Interest from the due dates of the last coupons matured prior to February 1, 1899, at the same rates up to the date when the new bonds begin to bear interest—namely, August 1, 1899.

Holders of certificates of deposit for Central Pacific common stock (not stamped "Non-assented"), on payment of $2 per share deposited, will be entitled to receive for each $100 share deposited:

Southern Pacific Company's stock	$100
Southern Pacific Company's Four Per Cent. Gold Bond, bearing interest from August 1, 1899	25

6413 ESTIMATED CASH REQUIREMENTS AND PROVISION THEREFOR.

For payment of four 3% Notes maturing as follows: $2,940,635.78 on August 1, 1899; $2,940,635.78 on February 1, 1900; $2,940,635.78 on August 1, 1900; $2,940,635.78 on February 1, 1901	$11,762,543.12
For new equipment, improvements and other purposes of the New Company, including also expenses of the readjustment, commission to Syndicate, compensation of the Readjustment Managers in the formation of the Syndicate, etc., any surplus to New Company	9,657,556.88
	$21,420,100.00
To meet these requirements the Syndicate will contribute by the purchase of new securities to be issued under the Plan and the agreement with the Southern Pacific Company	$21,420,100.00

SYNDICATE.

A Syndicate has been formed by Messrs. Speyer & Co., of New York, Messrs. Speyer Brothers, of London, Mr. Laz. Speyer Ellissen, of Frankfort o/ M., Messrs. Teixeira de Mattos Brothers, of Amsterdam, and the Deutsche Bank, of Berlin, which will be conducted by the first-named firm as Syndicate Managers, and which agrees:

(1) To purchase $11,762,543.12 of the Central Pacific Railroad Company's 3% notes to be given in settlement of claim of United States as above stated.

(2) To purchase $67,275,500 of the new Common Stock, and
6414 to offer the same for sale to depositing holders of the present Common Stock of the Central Pacific Railroad Company, as stated on page 1.

(3) To purchase $1,690,500 of the First Refunding Mortgage Four Per Cent. Gold Bonds, $11,305,000 of the Three and One-Half Per Cent. Mortgage Gold Bonds, and $12,000,000 of the new Southern Pacific Four Per Cent. Gold Bonds.

(4) To buy the outstanding bonds of holders who assent to the Plan, and while depositing their securities prefer to take cash rather than the new securities, as stated on page 2.

(5) To make advances and perform other obligations essential for the purposes of the Plan.

POSITION OF THE NEW COMPANY.

The annual fixed charges after readjustment and after the payment of all the notes given to the United States Government as proposed, it is estimated, will be not over	$4,875,000.00
The average net earnings, after payment of taxes, rentals and all other expenses, for the 10½ years ending June 30, 1898, were, including miscellaneous income (See Table D, page 13)	$4,893,259.17
Add present annual income from Sinking Fund Securities (as reported by the Company, see Table B, page 11)	689,680.00
	$5,582,939.17

6415 It thus appears that the fixed charges of the New Company on completion of the readjustment will be well within the past net income of the property.

The above statement of fixed charges does not take into account the saving in annual interest during the ten years ending August 1, 1909, during which time the Company will only have to pay three per cent. interest on the balance of the notes given for its debt to the United States Government and remaining unpaid from time to time, while the First Refunding Mortgage Bonds deposited as security therefor carry interest at four per cent.

It is estimated that under the readjustment upwards of $4,500,000 cash will be provided, which will be immediately available for improvements on the properties of the Railroad Company.

Dated February 8, 1899.

6416 CENTRAL PACIFIC RAILROAD COMPANY.

READJUSTMENT AGREEMENT.

Agreement made this Eighth day of February, one thousand eight hundred and ninety-nine, between Speyer & Company, of New York, Speyer Brothers, of London, Laz. Speyer Ellissen, of Frankfort o/ Main, Teixeira de Mattos Brothers, of Amsterdam, and the Deutsche Bank, of Berlin (hereinafter called the "Managers"), parties of the first part; Holders of the mortgage bonds and stock hereinafter mentioned who shall become parties to this agreement (hereinafter called "Depositors") parties of the second part, and Speyer & Company, of New York (hereinafter called the "Depositary"), parties of the third part.

Witnesseth that the parties hereto, for and in consideration of the conditions and promises hereinafter recited, and for the purpose of consummating the foregoing plan of readjustment, have mutually agreed and hereby do severally agree, and each Depositor has agreed and hereby does agree with the other Depositors and with the parties of the first part as follows:

First. The foregoing plan of readjustment is hereby adopted and approved, and shall be taken to be a part of this agreement, with the same effect as though each and every provision thereof had been embodied herein, and said plan and this agreement shall be read as parts of one and the same paper; but no estimate, statement, explanation or suggestion contained in the said plan or this agreement,
6417 or in any circular issued or which may hereafter be issued by the Managers is intended or is to be taken as a representation or warranty or as a condition of deposit or assent under the plan and this agreement, and no defect or error therein shall release any deposit under the plan and this agreement, or affect or release any assent thereto, except by written consent of the Managers. Duplicate originals of this agreement, signed by the parties of the first part, shall be lodged with each of said Managers; and each of said copies shall be taken as a complete and original instrument, but all shall constitute one agreement.

Second. Holders of the following named bonds and coupons and stock or any of them, may become parties to the plan and this agreement by depositing their securities (the word securities as used in this agreement being understood to include stocks as well as bonds, coupons and notes) with the Depositary hereinafter named upon the terms and conditions specified in the plan and this agreement, or as the same may be hereafter defined, and within the periods which shall be fixed or limited by the Managers, viz.:

1. Central Pacific Railroad Company of California First Mortgage Bonds, Series A, B, C, D, E, F, G, H, and I, aggregating $25,881,000.

2. Western Pacific Railroad Company First Mortgage Bonds, Series A and B, aggregating $2,735,000.

3. California and Oregon Railroad Company, and Central Pacific Railroad Company, successor, First Mortgage Bonds, Series A and B, aggregating $10,340,000.

4. Central Pacific Railroad Company First Mortgage Bonds (San Joaquin Valley Branch), aggregating $6,080,000.

6418 5. Central Pacific Railroad Company Fifty-Year Six Per Cent. Bonds, aggregating $56,000.

6. Central Pacific Railroad Company Fifty-Year Five Per Cent. Bonds, aggregating $10,245,000.

7. Central Pacific Railroad Company Land Bonds, aggregating $2,134,000.

8. Central Pacific Railroad Company Capital Stock, aggregating $67,275,500.

Such holders of existing securities must in all cases deposit their bonds or coupons or the certificates for their stock, with such transfers, assignments and powers of attorney as may be required by the Managers in order to vest full power in them, and to enable them to transfer the complete and absolute title to such stocks, bonds and coupons, and the Depositors agree respectively at any time on demand of the Managers to execute any and all other transfers, assignments or writings required for vesting the ownership of the bonds, coupons and stock deposited hereunder in the Managers or their nominees. All Depositors shall receive Certificates of Deposit in a form to be prescribed by the Managers, specifying the respective bonds, coupons or stock deposited, and the holders of such Certificates of Deposit issued hereunder shall be entitled only to the rights and benefits specified in the plan and this agreement as accruing to the holders of the bonds, coupons or stock represented by such certificates respectively, or granted by the Managers pursuant to the powers conferred upon them hereunder; and

6419 thereafter the holder of any such certificate or of any certificate issued in lieu thereof or in exchange therefor shall be subject to the plan and this agreement and entitled to have and exercise only the rights of the original Depositor under the certificate issued to him in respect of the securities therein mentioned. The holders of certificates of deposit issued by Speyer & Company under

a certain Bondholders Agreement dated August 14, 1897, in respect of First Mortgage Bonds of said Railroad Company, and under a certain other Bondholders Agreement dated October 1, 1897, in respect of said Railroad Company's Fifty-Year Five Per Cent. Bonds due April 1, 1939, shall be deemed Depositors under said plan and this agreement for all purposes, provided they shall not withdraw their bonds within the time specified in said respective agreements after the due publication of the notices therein mentioned. The holders of bonds remaining on deposit under the said Bondholders' Agreements respectively, after the expiration of the respective periods for withdrawal prescribed therein, shall be held as assenting to the plan and this agreement as fully as if the bonds had been actually deposited hereunder, and the Certificates of Deposit under said respective Bondholders' Agreements, which shall remain outstanding after the expiration of such respective periods of withdrawal, shall thereafter be deemed to be Certificates of Deposit under this Agreement, and shall have the like force and effect and are intended to be included in the term Certificates of Deposit as hereinafter employed.

Speyer & Company, of New York, shall act as Depositary under this agreement. The Central Trust Company of New York,
6420 or its agents in Europe, shall act as custodian and have custody of the deposited securities on behalf of said Depositary and subject to their order. Speyer & Company shall issue Certificates of Deposit (countersigned by or on behalf of said Trust Company as custodian) in such form as the Managers shall determine.

Third. Certificates of Deposit issued hereunder and the interests represented thereby shall be transferable only subject to the terms and conditions of the plan and this agreement and in such manner as the Managers shall approve; and upon such transfer, all rights of the Depositors in respect of the deposited bonds, coupons, or stock represented by such Certificates of Deposit, and in respect of all cash paid by the Depositors of such stock, or their transferees, and all rights under the Certificates of Deposit transferred, shall pass to the transferee, and the transferees and holders of such Certificates of Deposit shall for all purposes be substituted in place of the prior holders, subject to this agreement. All such transferees, as well as the original holders of Certificates of Deposit issued hereunder, shall be embraced under the term "Depositors," whenever used herein. Each Certificate of Deposit may be treated by the Managers and by the Depositary as a negotiable instrument, and the holder for the time being may be deemed to be and treated as the absolute owner thereof, and of all rights of the original depositor of the bond, coupon or stock in respect of which the same was issued, and neither the Depositary nor the Managers shall be affected by any notice
6421 to the contrary. By accepting any such Certificate of Deposit, every recipient or holder thereof shall thereby become a party to the plan and this agreement with the same force and effect as

though an actual subscriber hereto. The term Depositor, whenever used herein, is intended, and shall be construed, to include not only persons acting in their own right, but also trustees, guardians, committees, agents and all persons acting in a representative or fiduciary capacity, and those represented by or claiming under them, and partnerships, associations, joint-stock companies and corporations. No rights hereunder shall accrue in respect of any securities mentioned in the plan and in this agreement unless and until the same shall have been subjected to the control of the Managers and to the operation of the plan and this agreement as herein provided.

The cash payable by depositing stockholders as provided in the plan must be paid to the Managers for account of the Syndicate referred to in said plan, and must be receipted for by the Depositary on the respective Certificates of Deposit issued for such stock. The depositing stockholders agree that all such cash may be used at any time by the Managers, for any of the purposes of the plan and this agreement, including the payment of the principal or interest of any of the notes evidencing the debt of the Railroad Company to the United States. Depositors of stock and holders of Certificates of Deposit for deposited stock respectively agree that prompt payment of the cash payable by them respectively on the terms of the plan is an essential condition to their acquisition of new stock by
6422 purchase from the said Syndicate under the plan and this agreement or any claim thereto or to any proceeds thereof or other benefits or securities under the plan and this agreement, and that any Depositor or any holder of a Certificate of Deposit for stock who shall fail to make prompt payment of any cash payable as provided in the plan within the periods fixed or limited by the Managers for such payment shall forthwith, and without further or other notice or action, cease to have any rights, or to be entitled to any benefits hereunder; and that in every such case the deposited stock and any cash paid in respect thereof as above provided prior to the date of such default shall vest in and belong to the Syndicate absolutely, and that such defaulting Depositor or holder of a Certificate of Deposit shall not be entitled to the return or repayment of any such stock or cash, or to have any further interests or rights therein or in respect thereof. The Managers, however, but only in their absolute and uncontrolled discretion, may waive any such default and accept payment of cash due from any Depositor at any time before the final settlement of accounts with the Syndicate.

The Managers may in their discretion fix or limit the period or periods within which holders of any bonds, coupons or stock may deposit their securities, and within which they may become parties to the plan and this agreement, and the periods within which the cash payable by depositing holders of stock as consideration for new securities or other benefits or securities must be paid, and in their discretion, either generally or in special instances, may extend or renew the period or periods so fixed or limited, for such further
6423 periods and upon such terms and conditions as they may

see fit. Holders of securities not deposited within the periods respectively fixed or limited therefor will not be entitled to deposit the same or to become parties to this agreement or to share in the benefits hereof, and shall acquire no rights hereunder, except upon obtaining the express consent of the Managers, who may withhold or give such consent in their absolute discretion and upon such terms and conditions as they may see fit.

Fourth. The Depositors hereby request the Managers to endeavor to carry into practical operation the plan and this agreement in its entirety or in part, to such extent and in such manner and with such additions, exceptions and modifications as the Managers shall deem to be for the best interests of the Depositors and of the properties to be finally embraced in the readjustment. Each and every Depositor, for himself and not for any other, does hereby, sell, assign, transfer and set over to the Managers and to their successors and assigns, each and every bond, coupon or share of stock deposited hereunder, and every Depositor hereby agrees that the Managers shall be and they are hereby vested with all the rights and powers of owners of the stocks, bonds and coupons deposited hereunder, including the right to transfer the same into their own names, or into the name of any other person or persons, party or parties, whom or which they may select; and (without limiting the foregoing provision) it is hereby declared
that the Managers shall be fully authorized to call, attend, and,
6424 either in person or by proxy, vote on the deposited securities at
any meeting of stockholders or of bond or certificate holders or creditors, however convened; to use every such stock, bond, coupon, claim for interest, receipt, security or obligation as fully and to the same extent as the owner or holder thereof; to declare due the principal of any bond or other obligation deposited hereunder, and to revoke any such declaration whenever made; to terminate or to seek to dissolve or modify, or to determine the validity of, any contract or lease, in whole or in part; to apply for the removal of any trustee or the substitution of other trustees, or to take any other steps in respect of any contract or lease or under any provision thereof; to purchase at any time or times, at such prices as they shall deem proper, or to pay, compromise or settle any notes, bonds, coupons or other indebtedness or obligation of said Central Pacific Railroad Company or of any of the divisional companies by the consolidation whereof said Railroad Company was formed or constituting the system of the present Company, and to apply for that purpose any moneys received from the depositing stockholders or from the sale of any new securities, or otherwise received or raised by them; to loan money to the Railroad Company or its successor company in order to enable it to discharge any obligation secured or unsecured by mortgage; to borrow money for any of the purposes of this agreement, and to charge or pledge any deposited securities, property purchased, or new securities to be issued, for the
payment of any moneys borrowed; to give all bonds of indem-
6425 nity or other bonds, and to charge therewith the securities deposited hereunder or the new securities to be issued, or any part

thereof; to institute or to become parties to any legal proceeding; to apply for the appointment or for the removal of receivers and the substitution of other receivers, or for the termination of any receivership and the delivery of any property to its owners; to settle any litigation now or at any time existing or threatened, in whole or in part, with plenary power to enter into any arrangement tending towards or deemed by them, in their discretion, likely to promote the consummation of the plan; to do whatever, in the judgment of the Managers, may be necessary to promote or to procure the sale as an entirety or the separate sales of any lands, property or franchises herein concerned, wherever situated; to adjourn any sale at their discretion; to bid, or to refrain from bidding, at any sale, either public or private, either in separate lots or as a whole, for any property or franchises, or any part thereof, whether or not owned, controlled or covered by any deposited security, including or excluding any particular franchise or property real or personal; and at, before or after any sale to arrange and agree for the re-sale of any portion of the railroads or other properties or franchises which they may decide to sell rather than to retain; to hold any property or franchises purchased by them either in their name or in the name of persons or corporations by them chosen for the purposes of this agreement, and to apply any security embraced hereunder or any new securities to be issued hereunder in satisfaction of any bid or towards obtaining funds for the
6426 satisfaction thereof. The term properties and franchises shall include any and all railroads, railroad and other transportation lines, branches, leaseholds, lands, rights in lands, mining rights, stocks or other interests in corporations or sinking funds in which the Railroad Company has any interest of any kind whatever, direct or indirect. The amount to be bid or paid by the Managers for any properties or franchises shall be absolutely discretionary with them; and, in case of the sale to others of any property or franchises, the Managers may receive, out of the proceeds of such sale, or otherwise, any dividend in any form accruing on any securities held by them. The Managers shall further be authorized to receive and dispose of, in accordance with any of the provisions of the plan and this agreement, the new securities to be created, and the Managers may vote upon all the stock of any new corporation for all purposes in their judgment necessary to carry out the plan until the said stock shall be delivered to the Depositors or whoever shall be entitled to receive the same. The Managers may in their discretion pay or advance interest upon deposited bonds at the existing rate, or any other rate, or pay or advance interest upon the new securities before their delivery to Depositors, and apply for that purpose any funds collected by them, or borrow the necessary money therefor and charge the existing or new securities with the repayment thereof. Any such payments shall be endorsed on the Certificates of Deposit.

All moneys paid under or with reference to the plan and this agreement shall be paid over to Speyer & Company as
6427 Depositary, who shall hold the same subject to application for

any of the purposes of the plan and this agreement as may be most convenient, and as from time to time may be determined by the Managers, whose determination as to the propriety and purpose of any such application shall be final and conclusive, and nothing in the plan shall be understood as limiting or requiring the application of specific moneys to specific purposes. Any obligation in the nature of a floating debt or otherwise against any company or property embraced in the plan either as proposed or amended, and any securities held as collateral for any such obligation, may be acquired or extinguished or held by the Managers at such time, in such manner and upon such terms as they may deem proper for the purposes of readjustment, but nothing in the plan and this agreement contained is intended to constitute or create, nor shall it constitute or create, any liability, trust or duty in favor or respect of any such obligation.

Fifth. The Managers may construe the plan and this agreement, and their construction thereof or action thereunder, in good faith, shall be final and conclusive. They may supply any defect or omission, or reconcile any inconsistency in such manner and to such extent as shall be deemed by them necessary to carry out the plan and readjustment properly and effectively, and they shall be the sole judges of such necessity. They shall be the sole and final judges as to when and whether the assent of enough parties interested in the property
6428 and franchises of the Central Pacific Railroad Company shall have been obtained to warrant them in declaring the plan or any part thereof operative, or in attempting to carry the same or any part thereof into effect, and as to when and whether a sufficient number of the existing bonds upon the lines of railway to be covered by the proposed First Refunding Mortgage has been deposited to warrant the execution of such First Refunding Mortgage and Three and One-Half Per Cent. Mortgage, and the issue of bonds thereunder, pending the satisfaction of prior liens; and they shall have power whenever they shall deem proper, at any time before the new securities shall have been issued and delivered to the Depositors or other parties entitled to receive them, to alter, modify, depart from or abandon the plan of readjustment, or any part thereof. They may at any time or times, after any such partial abandonment, restore to the plan any abandoned part or parts thereof, and may seek to carry the same into effect as fully as if such part or parts had not been abandoned. They may also attempt to carry the plan into effect rather than to abandon or modify the same, even though it be manifest that, as carried out, the plan must depart from the original plan or from some part thereof. Any change or modification made by the Managers shall thereupon become and be part of the plan and this agreement; and all provisions concerning the present plan shall apply to the plan so changed or modified. But in case of any intentional change or modification of the plan, which in the judgment of the Managers shall materially affect the amount of new securities to which, or the
6429 proceeds of which, the several classes of Depositors are or are to be entitled, a statement of such proposed change or modifica-

tion shall be filed with the said Managers and said Depositary, and notice of the fact of such filing shall be given as hereafter provided in Article Eleventh; and within two weeks after final publication of such notice all holders of the outstanding Certificates of Deposit for such particular class or classes of securities so affected by any such change or modification may surrender their respective Certificates and withdraw their securities of such particular class or classes, or the proceeds thereof or substitutes therefor then under the control of the Managers, to the extent applicable in respect of such Certificates of Deposit, provided, however, that in every case of withdrawal and cancellation any certificate holder withdrawing shall make payment pro rata of his share of the expenses of said Managers, as apportioned by them. Every Depositor of securities not so surrendering and withdrawing within such two weeks after final publication of said notice shall be deemed to have assented to the proposed change or modification, and whether or not otherwise objecting, shall be bound thereby as fully and effectively as if he had actually assented thereto. In every case of withdrawal, any cash advanced or paid to Depositors, or to holders of Certificates of Deposit whether in respect of interest upon deposited bonds represented by such Certificates of Deposit, or upon the new bonds to be issued in exchange therefor under the plan, or otherwise advanced or paid, must be repaid, if the Managers
6430 so require, by the holders of such Certificates of Deposit before the deposited bonds, represented by such Certificates, shall be surrendered in exchange therefor; but any interest actually collected by the Managers on deposited securities will, in case of such withdrawal, be accounted for by the Managers to the holders of the Certificates of Deposit for such securities. In case the Managers shall finally abandon the entire plan, the stocks, bonds and coupons deposited hereunder or their proceeds, or any stocks, bonds and coupons received in respect thereof and then remaining under the control of the Managers shall be delivered to the several Depositors in amounts representing their respective interests upon surrender of their respective certificates and payment of such expenses as shall have been incurred by the Managers, and the Managers shall have power, in their discretion, to determine and to apportion upon the several classes of securities deposited hereunder the share of expense to be borne by each security. In any such case, any moneys paid by the depositing stockholders, or any securities or property acquired therewith, or the proceeds thereof when received, which shall remain, after deducting therefrom the share of the expenses incurred by the Managers under this agreement so apportioned, shall be equitably distributed or adjusted among the respective holders of Certificates of Deposit for such stock. But the Managers shall not be held liable for loss of any such money disbursed or expended by them for the purposes of the plan or of this agreement, nor for any depreciation in value of any property or securities purchased by them, and the depositing stock-
6431 holders or holders of such Certificates of Deposit shall have no claim for the repayment of any such moneys except to the

extent of their ratable shares of such moneys or their proceeds at the time remaining in the hands of or subsequently collected by the Managers after payment of all such expenses.

Sixth. The Managers may proceed under the plan and this agreement or any part thereof with or without foreclosure or sale or dissolution of the Central Pacific Railroad Company, and in any such case may exercise any power, either before or after sale; and in every case all the provisions of the plan and this agreement shall equally apply to and in respect of any physical properties embraced under the readjustment and to and in respect of any securities representing any such property, it being intended that for all purposes hereunder any such property, and any security representing such property, may be treated by the Managers as substantially identical. In case of any claim, lien or obligation not herein and in said plan fully provided for and affecting said Railroad Company, or any property or franchises thereof, the Managers may from time to time purchase or acquire the same or make such compromise in respect thereto or such provision therefor as they may deem suitable, using therefor any securities not expressly required for settlement with depositors or not expressly reserved for liens or obligations specified in the plan, but the total amount of new securities to be created as set forth in the plan shall not thereby be increased. Any action contemplated in the plan and this agreement to be performed on or after completion of the readjustment may be taken by the Managers at any time
6432 when they shall deem the readjustment advanced sufficiently to justify such course, and the Managers, as they may deem necessary, may defer the performance of any provision of the plan and this agreement, or may commit such performance to the Railroad Company or its successor company. They may also in their discretion set apart and hold in trust, or place in trust with any company, any part of the new securities to be issued, and any cash which may be received from sales of new securities, or otherwise, as they may deem judicious for the purpose of securing the application thereof for any of the purposes of the plan and this agreement or the uses of the Railroad Company or its successor.

Seventh. From time to time, for the purpose of carrying said plan and this agreement into effect, or of obtaining assents thereto, the Managers, either generally or in specific instances, may make contracts with any person, syndicate or corporation in respect of any matter connected with said readjustment; and, in their discretion, either generally or in specific instances, and upon such general or special terms and conditions as they may deem proper, may arrange to procure the deposit of securities hereunder or purchase and deposit the same; they may also, from time to time, by loan, guaranty, or by sale of the new securities to be created, or otherwise, upon such terms, conditions and rates as said Managers shall deem proper, obtain any moneys required to carry out the plan and this agreement, including such sums as the Managers shall deem expedient to provide for the uses of the Railroad Company or its successor; and

6433 for the performance of any contract made by them said Managers may charge the deposited securities and the new securities to be issued and may pledge the same for the payment of any moneys borrowed and interest thereon, and the performance of any other obligations incurred under the powers herein conferred. The Managers may employ counsel, agents and all necessary assistance, and may incur and discharge any and all expenses by them deemed reasonable for the purpose of this agreement. They may prescribe or approve the form of all securities, mortgages and all instruments at any time to be issued or entered into. The Managers may, at public or private sale, or otherwise, dispose of any bonds and stock left in their hands because of any failure to make deposits or to pay installments hereunder. In so disposing of any such new securities thus left in their hands, they may use the same or the proceeds thereof for the purpose of carrying out the readjustment in such manner as they may deem expedient and advisable. At the time of the creation of the new securities, or as soon thereafter as may be, the Managers may take such action (either by creating lesser amounts of securities, or otherwise) as they may deem necessary to guard against the issue of particular securities in any manner or to any extent inconsistent with the purposes of the plan.

Eighth. The said Managers under this agreement shall have the sole control, direction and management of the said plan of readjustment. The concurrent action of any three Managers shall be the action of all the Managers, and no action shall be taken except 6434 with the assent of at least three of said Managers. The said firms acting as Managers shall each act as copartnerships, and in case of any change in either of said firms, the respective firms of Speyer & Co., Speyer Brothers, Laz Speyer Ellissen and Teixeira de Mattos Brothers, or their respective successor firms, as from time to time constituted, shall continue as Managers, with all the powers, rights and title vested in the Managers hereunder. The Managers undertake to endeavor to execute the plan and this agreement; but neither the Managers nor the Depositary assume any personal responsibility for the execution of the plan or of this agreement, or any part of either, nor for the result of any steps taken or acts done for the purposes thereof. Nor shall the Managers or the Depositary be personally liable for any act or omission of any agent or employee selected by them, nor for any error of judgment or mistake of fact or law, nor in any case except for his, its or their own individual wilful malfeasance or neglect; nor shall any Manager be personally liable for the acts or defaults of any other manager or of the Depositary. The Managers may act through any committee or agents, and may delegate any authority, as well as discretion, to any such committee or agent, and the members of such committee or such agents may be allowed a reasonable compensation for their services hereunder. The Managers shall be entitled to compensation for their services. The Managers shall have the right to form or procure the formation of any Syndicate or Syndicates which they may deem necessary

or advantageous for carrying out the purposes of the plan, and
6435 any of them may act as Managers of such Syndicate or Syndicates. The terms of any such Syndicate shall be fixed by the Readjustment Managers, and, as so fixed, shall be binding and conclusive upon all parties. The Managers or any member thereof may be or become pecuniarily interested in any contracts, property or matters which this agreement concerns, including participation in or under any syndicate agreement, as syndicate managers, members, subscribers, or otherwise. Any direction given by the Managers shall be full and sufficient authority for any action of the Depositary or any custodian or of any committee or agent. The accounts of the Managers shall be filed with the Board of Directors of the Central Pacific Railroad Company or its successor company within one year after the readjustment shall have been completed. The accounts, when approved by such Board of Directors, shall be final, binding and conclusive upon all parties having any interest therein, and thereupon the Managers shall be discharged. The acceptance of new securities by any Depositor shall estop such acceptor from questioning the conformity of such securities in any particular to any provisions of the plan; and the acceptance of new securities by the holders of a majority in amount of the Certificates of Deposit for any class of securities shall in each case respectively estop all holders of Certificates of Deposit for securities of that class and constitute full ratification of all the acts and proceedings of the Managers in respect of or affecting such class of securities.

6436 Ninth. The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict general powers herein conferred or intended so to be; and it is hereby distinctly declared that it is intended to confer on the Managers, in respect of all securities deposited or to be deposited, and in all other respects, any and all powers which the Managers may deem necessary or expedient in or towards carrying out or promoting the purposes of the plan and this agreement in any respect as now existing, or as the same may be modified or amended, even though any such power be apparently of a character not now contemplated; and the Managers may exercise any and every such power as fully and effectively as if the same were herein distinctly specified, and as often as, for any cause or reason, they may deem expedient. The methods and means to be adopted for or towards carrying out said plan of readjustment and this agreement shall be entirely discretionary with the Managers.

Tenth. The bonds, coupons and stock deposited under the plan and this agreement, and all securities and claims purchased or otherwise acquired under this agreement, shall remain in full force and effect for all purposes, and shall not be deemed merged, satisfied, released or discharged by any delivery of new securities; and no legal right or lien shall be deemed released or waived, but said bonds and other claims, and any judgment upon any of such claims, including claims and judgments for deficiencies, and all liens and equities, shall remain unimpaired, and may be enforced by the Managers or by any

assign of the Managers until paid or satisfied in full or ex-
6437 pressly released. Neither the Managers nor any bondholders or creditors of the Railroad Company shall, by executing this agreement or becoming parties thereto, release, surrender, waive or merge any lien, right or claim in favor of any other creditors or any stockholders of such Company, and all such liens, rights or claims shall vest unimpaired in the Managers or their assigns. Any purchase or purchases by or on behalf of the Managers, under any decree for the enforcement of any lien, right or claim, shall vest the property purchased in the Managers free from all interest or claim on the part of any such stockholders, creditors or other parties. No right is conferred or created hereby, nor is any liability or obligation incurred by the plan and this agreement or assumed hereunder in favor of any bondholder or other creditor, or of any holder of any claim whatsoever against the Railroad Company, nor in favor of any company now existing or to be formed hereafter (whether such claim be based on any bonds, coupons, stock, securities, lease, contract, guaranty or otherwise), with respect to any securities deposited under this agreement or any moneys paid to, or received by the Managers or by the Depositary hereunder or with respect to any property acquired by purchase at any foreclosure sale, or with respect to any new securities to be issued hereunder, or with respect to any other matter or thing, and this agreement shall be construed strictly between the parties and as solely affecting and relating to the Managers, Depositary and Depositors hereunder.

Eleventh. All calls for the payments to be made by deposit-
6438 ing stockholders or for the surrender of Certificates of Deposit issued hereunder, all notices fixing or limiting any period for the deposit of securities or for such payments, and all other calls or notices hereunder shall be inserted in the "New York Times" and the "New York Tribune," or in two other daily papers of general circulation published in the City of New York; in two daily papers of general circulation published in the City of London, in two daily papers of general circulation published in the City of Frankfort on Main, in two daily papers of general circulation published in the City of Amsterdam, and in two daily papers of general circulation published in the City of Berlin, twice in each week for two successive weeks, beginning on any day of the week. Any call or notice whatsoever when so published by the Managers shall be taken and considered as though personally served on all depositors and certificate holders and on all parties hereto and upon all parties bound hereby, as of the respective dates of insertion thereof, and such publication shall be the only notice required to be given under any provision of the plan and this agreement. When a call or notice shall have been advertised as above specified in any one of said cities, publication shall be complete as regards all holders of Certificates of Deposit, issued by the Depositary in the city in which such publication shall have been made, and no further publication shall be required in such city or elsewhere, so far as the holders of such Certificates of

Deposit are concerned. Depositors may, however, furnish an address to the Managers where such notices may be mailed, and the mailing of a copy of such notice to said address shall be sufficient
6439 whether or not received by the addressee, and whether or not such notice shall have been published as above provided.

Twelfth. The plan and this agreement shall bind and benefit the several parties, including the Depositors hereunder, their and each of their survivors, heirs, executors, administrators, successors and assigns.

In Witness Whereof, the Managers, or a majority of them, and the Depositary have executed five duplicate originals of these presents the day and year first above written, and an original has been lodged with each of them, and the Depositors have become parties hereto by depositing their securities or accepting Certificates of Deposit hereunder.

6440 Mr. LOVETT. I now offer in evidence Defendants' Exhibit 38, being copy of Articles of Association of Central Pacific Railway Company, dated July 26, 1899.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 38 is as follows:

DEFENDANTS' EXHIBIT 38.

Central Pacific Railway Company.

ARTICLES OF ASSOCIATION.

Dated July 26, 1899.

STATE OF UTAH,
County of Salt Lake, ss.:

Know all Men by these Presents:

That we, the undersigned, whose names are hereunto subscribed, do hereby certify and declare that we have, under and in pursuance of an Act of the legislature of the State of Utah, entitled "An Act to provide for the formation of railroad corporations for the purpose of purchasing, owning, maintaining, operating and extending railroad lines, franchises, properties and appurtenances, authorizing the issue of bonds, making deeds of trust and mortgages and defining the rights and powers of such corporations," approved January 22, 1897, and the other laws of the State of Utah applicable thereto, associated ourselves together as a corporation for the purpose of buying, owning, maintaining, operating and further extending the railroads, rights, property and franchises hereinafter described,
6441 and we further certify and declare that we have adopted and do hereby adopt the following

ARTICLES OF ASSOCIATION.

ARTICLE 1. The corporate name of the corporation hereby formed shall be "Central Pacific Railway Company." By that name the

persons subscribing these Articles of Association, and all persons who may from time to time become shareholders in the corporation hereby formed, shall have perpetual succession, with power to adopt a common seal, sue and be sued, to acquire, hold, mortgage and convey property; to make contracts, fix and prescribe tariffs and rates of compensation for the carriage of persons and property, and generally to do all acts necessary or proper to carry into effect the powers and purposes of said corporation.

ART. 2. Said corporation shall continue in existence for the period of fifty years from the date of the filing of these Articles of Association in the office of the Secretary of State of the State of Utah.

ART. 3. Said corporation shall possess all of the powers, rights and franchises specified, referred to or provided for in these Articles of Association; and, also, all of the powers which, by said Act above entitled, approved January 22, 1897, and such other laws of the State of Utah, corporations formed under, and pursuant to, the said Act and laws, are entitled to have, possess and enjoy as fully as if all of the provisions of the said Act in this behalf were herein set forth at large; and, also, all of the powers, rights, privileges and franchises of railroad corporations organized under the laws of the State
6442 of Utah, or under the laws of other States or Territories of the United States, as hereinafter provided.

ART. 4. The amount of the Capital Stock of the said corporation shall be eighty-seven million two hundred and seventy-five thousand five hundred dollars ($87,275,500), which shall be divided into and represented by eight hundred and seventy-two thousand seven hundred and fifty-five (872,755) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such Capital Stock two hundred thousand (200,000) shares of one hundred dollars ($100) each may be issued as Preferred Stock, and six hundred and seventy-two thousand seven hundred and fifty-five (672,755) shares of one hundred dollars ($100) each may be issued as Common Stock.

Such Preferred Stock shall be entitled, in preference and priority over the Common Stock of said corporation, to accumulative preferential dividends from August 1, 1899, up to four per cent. per annum gold, payable semi-annually, out of net profits of the corporation, as the same shall be declared by the Board of Directors thereof, and shall be entitled to a preference and priority over said Common Stock in respect of capital in case of liquidation or dissolution. Subject to the preferential rights above described, dividends up to four per cent. per annum out of net profits of the corporation, as the same shall be declared by the Board of Directors thereof, shall be paid upon the Common Stock of the corporation, and the
6443 balance of dividends payable out of net profits of the corporation, as the same shall be declared by the Board of Directors thereof, shall be paid pro rata upon the Preferred and Common Stock. The Directors may adopt proper by-laws to carry into effect the provisions of this article.

ART. 5. The number of Directors to manage and control the affairs of this corporation shall be seven, a majority of whom shall be sufficient to form a quorum for the transaction of business. The names and residences of those who shall serve as Directors for the first year, and until their successors are chosen and qualified, are

Thomas Marshall, Salt Lake City, Utah.
Jonathan C. Royle, Salt Lake City, Utah.
David B. Hempstead, Salt Lake City, Utah.
Douglas O. Morgan, New York City, N. Y.
Henry Ruhlender, New York City, N. Y.
Charles J. Dodd, New York City, N. Y.
Richard R. Rogers, New York City, N. Y.

ART. 6. The said corporation is organized and formed for and shall have the power to purchase, own, hold, enjoy, maintain, operate and further extend the railroads, property, rights and franchises, or any part thereof, belonging to the Central Pacific Railroad Company, a corporation heretofore organized under the laws of the State of California and invested with franchises under Acts of Congress of the United States, and under the laws of the States of Utah and Nevada.

The said corporation hereby formed shall have the power to acquire, possess and enjoy the lands and land grants, or any part
6444 thereof, and all rights with respect thereto, of the said Central Pacific Railroad Company or any or either of its constituent companies; and the said corporation hereby formed shall have power to construct or acquire by lease, purchase, consolidation, ownership of capital stock or otherwise, branches, extensions and connecting or auxiliary lines, within or without this State, as the Board of Directors may from time to time deem expedient and as may be authorized by law.

The termini of the said railroad which the said corporation hereby formed is authorized to acquire, enjoy and operate as now constructed, and the States and counties through which the said railroad passes, are as follows, to wit:

The railroads extending from a point about five miles west of Ogden, in the County of Weber, in the State of Utah, through the Counties of Weber and Box Elder, in said State of Utah, and the Counties of Elko, Eureka, Lander, Humboldt, Churchill, Lyon, and Washoe, in the State of Nevada, and the Counties of Sierra, Nevada, Placer and Sacramento in the State of California, to and into the City of Sacramento, in said last-mentioned county and state; and from said Sacramento through the Counties of Sacramento, San Joaquin, Alameda and Santa Clara in the State of California, to San Jose in the last-mentioned county and State; and from Niles, in the County of Alameda, in the State of California, through the County of Alameda, in the State of California, to Oakland, in said last-mentioned county and state, and from the Water Front to Mission Bay, in the City and County of San Francisco in said State; and from Lathrop, in the County of San Joaquin, in the State of California, through the Counties of San Joaquin, Stanislaus,

6445 Merced, Madera, Fresno and Tulare, in the State of California, to Goshen, in said last-mentioned county and state: and from Roseville in the County of Placer, in the State of California, through the Counties of Placer, Yuba, Sutter, Butte, Tehama, Shasta and Siskiyou, in said State of California, to the boundary between the States of California and Oregon in the last-mentioned county; also the leasehold of the railroad from a point about five miles west of Ogden to Ogden, in the County of Weber, in the State of Utah.

The railroads situated in the Cities of Oakland and Alameda, in the County of Alameda, in the State of California, between the following termini, that is to say:

(1) From a point in the City of Oakland, County of Alameda and State of California, on the line hereinbefore described, running from Niles to Oakland, and near the intersection of First and Broadway Streets, curving towards and crossing the Estuary of San Antonio, to the City of Alameda in said county and State; thence running northeasterly through the City of Alameda, via Masticks Station, to junctions with said first-mentioned line at Fruitvale and Melrose Stations, and also from Masticks Station aforesaid, via Pacific Avenue, to the shore of the Bay of San Francisco.

(2) From Brooklyn Station upon said line from Niles to Oakland westerly through said City of Oakland, via Seventh Street, to the shore of the Bay of San Francisco.

(3) From a point of junction of the Oakland Mole of said line from Niles to Oakland with the wharf known as "Long Wharf," to the western end of said wharf.

6446 The said railroads above described being the railroads which, on the 28th day of July, 1899, were the property of the Central Pacific Railroad Company herein referred to, and being 1,367.78 miles in length.

Together with such branches and extensions of said railroad or railroads, or any part thereof, as the company hereby formed may from time to time be authorized by law to construct, operate, acquire and maintain.

ART. 7. The corporation hereby formed shall be vested with, and entitled to exercise and enjoy, all the powers, rights, privileges and franchises which at the time of the acquisition of the said railroads by the corporation hereby formed, or at the time of the sale thereof, belonged to, or were vested in, the Central Pacific Railroad Company, or in the corporation or corporations last owning the said railroads and properties, as well as all the rights, privileges and franchises of railroad corporations organized under the laws of the State of Utah, including the aforesaid Act of the Legislature of the State of Utah, approved January 22, 1897, and said other laws of the State of Utah; and said corporation shall also possess in each State or Territory, as respects its railroads, or any branches or extensions thereof situate therein, all of the powers, rights, privileges and franchises of railroad corporations organized under the laws of such State or Territory, or of the United States.

ART. 8. The corporation hereby formed may construct or acquire by lease, purchase, consolidation, ownership of capital stock, or otherwise, branches, extensions and connecting lines within or without this State, and for such purposes or any of them, as well as the purchase or acquisition of the railroads described in Article 6 hereof, may from time to time create and issue its stock, Common or Preferred, or both, and execute bonds and mortgages, for such sum or sums, and payable at such times and places, and drawing such rate of interest, as the Directors may deem proper; and may use such stock and bonds, or any part thereof, in payment of property to be purchased by such corporation, or the improvement or extension thereof, upon such terms, as the Directors may deem expedient; may guarantee the bonds or obligations of extensions, branches, or connecting or auxiliary lines of railroad; and, in exercising its corporate powers, it may make such leases, purchases, contracts, conveyances and consolidations, and do such acts, as the Directors may deem necessary or expedient, not inconsistent with these articles or with the Constitution and laws of the State of Utah. The company hereby formed may also consolidate with or merge itself into any other railway company or companies in this or other States or Territories, pursuant to law; it may also from time to time amend these Articles of Association by filing amended Articles of Association, increasing the capital stock, or otherwise, agreeably with law, enlarging or changing the powers of the corporation hereby formed. 6447

ART. 9. The Board of Directors of said corporation may from time to time adopt and change by-laws not inconsistent with the provisions of these articles or the Constitution and laws of the State of Utah. Said by-laws shall provide for annual elections of Directors by the stockholders, and for the election by the Directors of a President and Vice-President, and for the election or appointment of such other Vice-Presidents or other officers as shall be prescribed in such by-laws. Shareholders' or other corporate meetings may be held at such place or places in the United States as the by-laws may prescribe. 6448

ART. 10. Stockholders shall not be individually liable for the debts of the corporation.

In Testimony Whereof, We have hereunto subscribed our names this twenty-sixth day of July, 1899.

CHARLES STEELE.
THOMAS MARSHALL.
ROBERT C. CHAMBERS.
JONATHAN C. ROYLE.
DAVID B. HEMPSTEAD.
JOHN E. DOOLY.
GEORGE B. BRASTOW.
HARRY T. DUKE.
GEORGE M. DOWNEY.
DOUGLAS O. MORGAN.

STATE OF UTAH,
County of Salt Lake, } ss.:

On this 26th day of July, 1899, before me, the undersigned Notary Public, personally appeared Charles Steele, Jonathan C. Royle, Thomas Marshall, David B. Hempstead, Harry T. Duke, John E. Dooly, George B. Brastow, George M. Downey, Douglas O. Morgan and Robert C. Chambers, to me known, and known to me to be the identical persons named and described in and who subscribed the foregoing instrument, and they acknowledged to me that they signed the foregoing Articles of Association for the uses and pur-
6449 poses therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

LULA GEOGHEGAN,
Notary Public.

(Notarial Seal.)
My Commission Expires Sept. 17, 1901.

6450 Mr. LOVETT. I now offer in evidence Defendants' Exhibit 39, being copy of an Agreement dated July 29, 1899, between the Central Pacific Railroad Company and the Central Pacific Railway Company.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 39 is as follows:

DEFENDANTS' EXHIBIT 39.

Central Pacific Railroad Company to Central Pacific Railway Company.

INDENTURE AND AGREEMENT.

Dated July 29, 1899.

An Indenture and Agreement, made and entered into the twenty-ninth day of July, one thousand eight hundred and ninety-nine, by and between the Central Pacific Railroad Company, a corporation created, organized and existing under the laws of the State of California, and invested with certain rights and franchises by and under the laws of the United States of America and by and under the laws of the States of Utah and Nevada, party of the first part, and the Central Pacific Railway Company, a corporation created, organized and existing under and by virtue of the laws of the State of Utah, of the second part:

Whereas, the party of the first part is the owner of the lines of railroad, the railways and other properties, rights, privileges and franchises, and the lands and notes and securities and moneys,
6451 hereinafter in the granting clause hereof described or referred to; and,

Whereas, certain portions of the said lines of railroad and railways and their appurtenances, and said lands, owned by the said party of the first part, are subject to the liens of certain mortgages severally and respectively securing bonds now outstanding (hereinafter called "outstanding old bonds") for the several aggregate principal sums following, to wit:

(a) The Central Pacific Railroad Company of California First Mortgage Bonds, secured by mortgage dated July 25, 1865, of the several series and for the amounts and now matured or maturing at the dates hereinafter stated, respectively, viz.:

Series.	Amount.	Date of Maturity.
Series A	$2,995,000	Matured.
B	$1,000	Matured.
	$999,000	December 1, 1899.
C	$4,000	Matured.
	$996,000	December 1, 1899.
D	$4,000	Matured.
	$1,379,000	December 1, 1899.
Total	$6,378,000	

(b) The Central Pacific Railroad Company of California First Mortgage Bonds, secured by mortgage dated January 1, 1867, of the several series and for the amounts and now matured or maturing at the dates hereinafter mentioned, respectively, viz.:

6452

Series.	Amount.	Date of Maturity.
Series E	$5,000	Matured.
	$3,990,000	June 1, 1900.
F	$9,000	Matured.
	$3,990,000	June 1, 1901.
G	$13,000	Matured.
	$3,985,000	June 1, 1901.
H	$6,000	Matured.
	$3,993,000	June 1, 1901.
I	$13,000	Matured.
	$3,498,000	June 1, 1901.
Total	$19,502,000	

(c) The Western Pacific Railroad Company First Mortgage Bonds, secured by mortgage dated July 1, 1869, of the several series and for the amounts and which matured at the date hereinafter mentioned, viz.:

Series A for	$1,970,000	Matured July 1, 1899.
B "	765,000	" " " "
Total	$2,735,000	

(d) The California and Oregon Railroad Company, and Central Pacific Railroad Company, successor, First Mortgage Bonds, secured by mortgages dated January 1, 1868, and January 1, 1872, respectively, of the several series and for the amounts and maturing at the date hereinafter mentioned, viz.:

Series A for	$5,982,000	Maturing January 1, 1918.
B "	$4,358,000	" " " "
Total	$10,340,000	

(e) The Central Pacific Railroad Company First Mortgage Bonds (San Joaquin Valley Division), secured by mortgage dated October 1, 1870, for the amount of $6,080,000, maturing October 1, 1900.

6453 (f) The Central Pacific Railroad Company Fifty-Year Five Per Cent. Bonds, secured by mortgage dated April 1, 1889, to the amount of $12,283,000, maturing April 1, 1939, of which bonds the amount of $2,038,000 are held as security for the Land Bonds next hereinafter mentioned.

(g) The Central Pacific Railroad Company Land Bonds, secured by mortgage dated October 1, 1870, to the amount of $2,134,000 and maturing October 1, 1900.

And, Whereas, heretofore and under date of February 1, 1899, the said party of the first part (in pursuance of a Settlement Agreement between the United States of America, the said party of the first part, and Messrs. Speyer & Co., dated February 1, 1899, entered into under the provisions of an Act of Congress, approved July 7, 1898) executed its twenty promissory notes in favor of the United States of America for $2,940,635.78 each, maturing on or before the expiration of each successive six months from the date thereof; and,

Whereas, the said party of the first part is also indebted to the holders of its bonds to the amount at their face value of $56,000, bearing date October 1, 1886, and payable October 1, 1936, with six per cent. interest, payable semi-annually, commonly known and referred to as "Fifty-year Bonds of 1936."

And, Whereas, under and by virtue of authority from the States of California, Utah and Nevada, the party of the first part has sold to the party of the second part hereunder, subject to the liens now existing thereon, and upon and subject to the terms and conditions hereinafter prescribed, all the lines of railroad, railways and

6454 other properties and rights, privileges and franchises, and lands, notes, securities and moneys hereinafter in the granting clause hereof described and referred to, and any and all other properties, claims, demands, choses in action, rights, privileges and franchises of the said party of the first part:

Now, Therefore, This Indenture Witnesseth, That, in consideration of one dollar, which, simultaneously with the execution hereof, has been paid by the party of the second part to the party of the first part, the receipt whereof by said party of the first part is hereby acknowledged, and for and in consideration of the undertakings, covenants and agreements on behalf of the said party of the second part hereinafter contained, said party of the first part has granted, bargained, sold, conveyed, assigned, transferred and set over, and hereby grants, bargains, sells, conveys, assigns, transfers and sets over, unto the party of the second part:

First, The lines of railroad owned by the party of the first part, extending from a point about five miles west of Ogden, in the State of Utah, through the States of Utah, Nevada and California, to and into the City of Sacramento, in the State of California, and from said Sacramento to San Jose, in said last mentioned State, and from

Niles to Oakland, and from Lathrop to Goshen, all in the State of California, and from Roseville, in said State of California, to the California and Oregon boundary; also the leasehold of the railroad from a point about five miles west of Ogden to Ogden, in the County of Weber in the State of Utah.

Second. All the railways belonging to the party of the
6455 first part in San Francisco, Oakland and Alameda in the State of California, and the terminals belonging to the party of the first part, used in connection therewith, including wharves, piers, docks, embankments, ferries, steamers and transfer and ferryboats.

Third. All roadbeds, superstructures, rights of way, rails, tracks, side tracks, bridges, viaducts, terminals, buildings, depots, stations, warehouses, car houses, engine houses, freight houses, coal houses, wood houses, machine shops and other shops, turn tables, water stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind, now owned by the party of the first part, which shall in anywise, or at any time, belong or appertain to, or be provided for use upon, or for the purposes of, any of said lines of railroad, and any and all other property, real or personal, of every kind and description, now owned by the party of the first part, for use upon or for the purposes of such lines of railroad or terminals, or any of them.

Fourth. Any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels of the party of the first part now owned for use upon any of such lines of railroad or terminals or other property.

Fifth. Any and all other railroads, equipment and terminals owned by the party of the first part.

Sixth. Any and all corporate or other rights, privileges and franchises which the party of the first part now has, or hereafter
6456 shall acquire, possess or become entitled to, for, or appertaining to, the construction, maintenance, use or operation of, such lines of railroad or terminals or other property.

Seventh. Any and all the rents, issues, profits, tolls and other income of such lines of railroad or terminals or other property.

Eighth. All and singular the several sections of land granted by the United States to the Central Pacific Railroad Company of California by an Act of Congress approved on the first day of July, 1862, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," and an act amendatory thereof, approved on the second day of July, 1864; also all the lands granted to the California and Oregon Railroad Company by an Act of Congress approved on the twenty-fifth day of July, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon;" and also all the estate, right, title, interest claim and demand whatsoever,

at law or in equity, of, in or to the same or any part or parcel thereof, which the said party of the first part now has, holds, owns or is entitled to, or hereafter may or shall acquire, have, hold, own or be or become entitled to by force or virtue of the said Acts of Congress, saving and excepting all parts and parcels of said lands which were sold prior to the execution of the mortgage from the Central Pacific Railroad Company to Charles Crocker and Silas W. Sanderson, dated the first day of October, A. D. 1870, securing the Land
6457 Bonds of said last-mentioned Company, and all such parts and parcels of said lands as shall have since been released from the said mortgage securing such Land Bonds in accordance with the provisions thereof.

Ninth. All notes now outstanding given in payment for lands covered by such mortgage of the Central Pacific Railroad Company, dated October 1, 1870, securing said Land Bonds.

Tenth. All securities and moneys which are held in any sinking fund created or existing by or under any mortgage existing on the 20th day of February, 1899, whether of the party of the first part or any divisional company by the consolidation whereof it was formed.

Eleventh. All other properties, claims, demands, moneys, choses in action, leaseholds, rights, privileges and franchises owned by or belonging to the party of the first part, or to which it is in any wise entitled.

To Have and to Hold, the premises, railroads, railways, properties real or personal, claims, demands, choses in action, leaseholds, rights, privileges, franchises, estates and appurtenances, lands, land notes and securities and moneys hereby granted, bargained, sold, conveyed, assigned, transferred or set over, or intended so to be, unto the party of the second part and to its successors and assigns forever, but subject to the liens thereon hereinbefore mentioned and referred to.

And in further consideration hereof, and in order to provide for the readjustment of the present funded indebtedness of the party of the first part (subject to which the properties of said party
6458 of the first part are hereby conveyed), and for the purpose of securing the payment of the amounts becoming due on the Notes given by said party of the first part to the United States under said Settlement Agreement, dated February 1, 1899, as in said Settlement Agreement prescribed, the party of the second part has assumed and hereby assumes the payment of all the indebtedness and guaranties of the said party of the first part, and has undertaken, covenanted and agreed, and hereby undertakes, covenants and agrees, to and with the party of the first part, that it will issue stocks and securities and execute mortgages as prescribed in the Central Pacific Readjustment Plan and Agreement dated February 8, 1899, issued by Speyer & Co., Speyer Brothers, Laz Speyer Ellissen, Teixeira de Mattos Brothers and the Deutsche Bank of Berlin, as Readjustment Managers, or as the same may be modified under the terms thereof and with the assent of the party of the second part, and in a certain Agreement

bearing date the 20th day of February, one thousand eight hundred and ninety-nine, by and between F. G. Banbury, Esq., M. P., John B. Akroyd, Esq., Lord Alwyne Compton, M. P., Daniel Marks, Esq., and Joseph Price, Esq., as the London Committee of Central Pacific Shareholders, Messrs. Speyer & Company of New York, Messrs. Speyer Brothers of London, Mr. Laz Speyer Ellissen of Frankfort-on-the-Main, Messrs. Teixeira de Mattos Brothers of Amsterdam, and the Deutsche Bank of Berlin, as Readjustment Managers as therein stated, and the Southern Pacific Company, and in a certain other Agreement bearing date the 1st day of March, one thousand eight hundred and ninety-nine, by and between August Belmont, Esq., Hon. John G. Carlisle and George Coppell, Esq., as the Ameri-
6459 can Committee of Central Pacific Shareholders, the said Readjustment Managers and the Southern Pacific Company, and, under arrangements made or to be made with said Readjustment Managers will carry out such Readjustment Plan and said Agreements.

In Witness Whereof, the parties hereto have caused these presents to be signed on their behalf respectively by their respective Presidents, and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries, the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,
By ISAAC L. REQUA, *President.*

(Seal of Central Pacific Railroad Company.)
Attest:

W. M. THOMPSON, *Secretary.*
CENTRAL PACIFIC RAILWAY COMPANY,
By THOMAS MARSHALL, *President.*

(Seal of Central Pacific Railway Company.)
Attest:

DAVID B. HEMPSTEAD, *Secretary.*

6460 Mr. LOVETT. I next offer Defendants' Exhibit 40, being copy of agreements of lease between the Central Pacific Railroad Company and the Southern Pacific Company.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 40 is as follows:

DEFENDANTS' EXHIBIT 40.

LEASE.

CENTRAL PACIFIC RAILROAD COMPANY TO SOUTHERN PACIFIC COMPANY.

This Agreement, made and entered into this seventeenth (17) day of February, 1885, between the Southern Pacific Company, a corpora-

tion duly organized and existing under the laws of the State of Kentucky, and now doing business in the State of California, and the Central Pacific Railroad Company, a corporation duly formed and existing under the laws of the State of California and the United States, Witnesseth:

That whereas part of the through business heretofore done by the Central Pacific Railroad Company's line from Ogden to the waters of the Pacific has been diverted by the Northern Pacific, Atlantic and Pacific, and Atchison, Topeka and Santa Fe railroads;

6461 And whereas the Union Pacific Railroad Company has secured the control of the road known as the Oregon Short Line, and thereby secured an outlet to the Pacific, other than over the Central Pacific Railroad, and thus in that respect placed itself in opposition to the interests of the Central Pacific;

And whereas it now appears that the through business, hitherto done by the Central Pacific Railroad, will thereby be further diverted; and that it is not only to the best interests of, but absolutely necessary that, the Central Pacific Railroad Company, in order to maintain itself against these diversions, should be operated in connection with a friendly through line to the waters of the Atlantic;

And whereas the said Southern Pacific Company has a line of railroad under its control, for a period of ninety-nine years, extending continuously from the Pacific Ocean to the Atlantic Ocean;

And whereas the lines of each company are doing a large local traffic, and it is important to both that the same should be conducted in harmony;

And whereas the said Southern Pacific Company is willing to enter into an agreement with the Central Pacific Railroad Company whereby its line and the line of the said Southern Pacific Company shall be operated so as to secure their just rights to each without the one gaining any benefit or advantage at the expense of the other, and whereby the Central Pacific Railroad Company may for a long term of years be assured of protection against the diversion of its traffic and be relieved of the disadvantages flowing from lack of harmonious connections;

6462 And whereas by reason of the facts before recited it is mutually advantageous to the Southern Pacific Company and the Central Pacific Railroad Company to make such agreement;

And whereas both companies contract in the knowledge that the future development of the country may change materially the relations of the companies to each other in respect to railroad traffic, and may in the future render any agreement now made, however fair in its terms in view of existing conditions, advantageous to one at the expense of the other, and thereby defeat the purposes which said companies desire and intend to accomplish by making this agreement;

And whereas it is intended that such shall never be the effect of this agreement, therefore all the promises and covenants herein shall be construed in the light of the conditions now existing, and the arbi-

trators hereinafter named, in adjusting the terms and provisions of this agreement to a changed state of affairs, if such change should ever take place, must keep in view the main purpose of the parties to this agreement, to wit, that it is for the mutual advantage of both parties, and that neither is to be benefited at the expense of the other;

Now, therefore, to accomplish the purposes aforesaid, in consideration of the premises and of the mutual promises herein, the said Central Pacific Railroad Company hereby leases to the said Southern Pacific Company, for the term of ninety-nine years, from the first day of April, A. D. 1885, the whole of its railroad situated in the Territory of Utah and States of Nevada and California, and known and designated as the Central Pacific Railroad, together with
6463 all the branches thereof, together with all the rolling stock, telegraph lines, steamboats, wharves, piers, depots, workshops, and all other property, real and personal, now owned, held, and possessed by the said Central Pacific Railroad Company and used upon, or in connection with, said railroad and telegraph lines, together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, operate and enjoy the said property, and to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby assigns to the said Southern Pacific Company all the leases which it now holds of railroads and other property situated in said State of California, and lying and being north of the town of Goshen, in the County of Tulare, with the right to take, hold, operate, maintain, and enjoy said railroads and other property in the same manner as the said Central Pacific Railroad Company holds, operates, enjoys, and maintains the same under the said leases, and with the right to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby releases the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the United States and of the State of California, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of Arizona, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of New Mexico, and each of them, from all and every obligation under or by virtue of any and every lease made by said three last-mentioned railroad
6464 companies, or either them, to the said Central Pacific Railroad Company, and transfers and surrenders unto the said Southern Pacific Company, the possession of all the property in said leases, or any of them mentioned or described, with the right to receive the rents, issues, and profits thereof free from all claim of the said Central Pacific Railroad Company to the same or any part thereof.

The said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep and maintain the property hereby leased in good order, condition, and repair; operate, maintain, add to, and better the same, at its own expense; pay all

taxes legally assessed against or levied thereon, and will at the termination of this lease return the same to the said Central Pacific Railroad Company, or to its successors or assigns (with additions and betterments) in as good condition and repair as the same was at the date hereof.

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it hereby assumes and will discharge all the liabilities and obligations of every kind (including its obligations on leases now held by it) of the said railroad company, except the obligation to pay the principal of said railroad company's indebtedness known as its "floating debt," and except the obligation to pay the principal of the indebtedness of said railroad company known as its "bonded indebtedness," now outstanding and secured by mortgage or deed of trust, or which may be hereafter incurred under the provisions of any existing mortgage or deed of trust, or of any mortgage or deed of trust hereafter made with the consent of the Southern Pacific Company; and except the
6465 principal of all indebtedness the payment of which has heretofore been guaranteed by the Central Pacific Railroad Company; and except the principal of the indebtedness of the said Central Pacific Railroad Company evidenced by bonds of the United States heretofore by the Government thereof loaned to the said Central Pacific Railroad Company. That as to such excepted indebtedness the said Southern Pacific Company will pay off and discharge at maturity the interest upon the same, except the interest upon the bonds of the United States loaned as aforesaid; and that, as to such bonds and the interest thereon, the said Southern Pacific Company will discharge the annual obligations imposed upon said Central Pacific Railroad Company by existing acts of Congress, and will during the continuance of this agreement fully comply with the terms of, perform all the duties prescribed in, and discharge all the obligations imposed upon said Central Pacific Railroad Company by the act of Congress commonly known as the "Thurman Act."

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it will well and truly perform all the duties and obligations of said railroad company to the United States and the Government thereof under existing acts of Congress relating to the maintenance and operation of its railroad, and to transportation for said Government over the same, as fully and faithfully as said railroad company is bound to do, except as otherwise hereinbefore provided.

And the said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep
6466 true and faithful accounts of all the earnings of the said Central Pacific Railroad, including the earnings of the railroads now held by said Central Pacific Railroad Company under leases and situated north of Goshen, together with true and faithful accounts of all expenditures, payments and disbursements of every kind made by the said Southern Pacific Company in operating, main-

taining, adding to, and bettering the same, and of all expenditures, payments, and disbursements made by the said Southern Pacific Company for taxes, rentals, interest, or in discharge of obligations incurred by said Southern Pacific Company under the provisions of this agreement hereinbefore contained: Provided, however, That any payments made by the said Southern Pacific Company to either of the said Southern Pacific railroads hereinbefore mentioned for rentals under the terms of existing leases in favor of the said Central Pacific Railroad Company, and now assigned to the Southern Pacific Company, shall never be included in or made part of any charge against the said Central Pacific Railroad Company or the earnings of its said railroads.

And the said Southern Pacific Company hereby agrees with the said Central Pacific Railroad Company that during the continuance of this lease it will annually, on the first Monday in May, pay to the said Central Pacific Railroad Company, as guaranteed rental for said Central Pacific Railroad and other leased property for the year ending on the thirty-first day of December next preceding that date, the sum of one million two hundred thousand dollars ($1,200,000).

6467 And the said Southern Pacific Company hereby further in this behalf agrees with the said Central Pacific Railroad Company that if the earnings of the said Central Pacific Railroad, and of the railroads situated north of Goshen now held by the said Central Pacific Railroad Company under leases, shall in any year during the continuance of this agreement exceed all expenditures, payments, and disbursements of every kind made by the said Southern Pacific Company for such year, in operating, maintaining, adding to, and bettering the same, and of all expenditures, payments, disbursements made by the said Southern Pacific Company for taxes, rentals, interest, and in discharge of any of the obligations by said Southern Pacific Company incurred under this agreement, as heretofore provided, including the said sum of one million two hundred thousand dollars, then such excess for any such year not exceeding the sum of two million four hundred thousand dollars shall, on the first Monday in May, as aforesaid, be paid to the said Central Pacific Railroad Company as additional rental for such year.

And it is further agreed between said Southern Pacific Company and the said Central Pacific Railroad Company that if at any time it appears that by the operation of this agreement either party is being benefited at the expense of the other, then this agreement shall be revised and changed, so that such will not be the operation thereof, and if the parties hereto can not agree upon the changes necessary to that end, then each party shall appoint one arbitrator, disinterested, but skilled in relation to the subject matter, and the award and decision of such arbitrators, in writing, shall be binding

6468 upon the parties hereto, and this agreement shall be revised and changed in accordance with such award and decision, and, as revised and changed, shall be duly executed in writing by the parties hereto.

And it is further agreed that if the arbitrators so chosen can not agree upon an award and decision, then that the two shall choose a third impartial and skilled arbitrator, and that the award or decision of two of said three arbitrators shall have the same force and effect between the parties hereto, and shall be executed in like manner as hereinbefore provided for the award and decision of the two arbitrators first chosen.

And it is further agreed between the said Southern Pacific Company and the said Central Pacific Railroad Company that if any legislation or governmental action hereafter be had which, in the opinion of the said Southern Pacific Company, is in hostility to the said Central Pacific Railroad Company, its rights, or the property hereby leased, the said Southern Pacific Company may, on notice to the said Central Pacific Railroad Company, terminate this agreement, or may submit to arbitrators, in the manner and with the effect hereinbefore provided for, changes and revisions.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that, upon the execution of this agreement, the said Southern Pacific Company may enter upon, take possession of, and hold during the continuance of this agreement all the property, real and personal, hereby leased by the said Central Pacific Railroad Company to the said Southern
6469 Pacific Company, and that duplicate lists of all the rolling stock and other personal and movable property so leased, showing its condition at the time of the execution of this agreement, shall be made and certified by the secretary of each of said companies, and that one of said lists shall be kept by each of said companies.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that if at any time any of the rolling stock or other personal property hereby leased to the said Southern Pacific Company by said Central Pacific Railroad Company be used upon any roads other than the Central Pacific Railroad or the leased roads north of Goshen, then the said Southern Pacific Company shall credit to the said Central Pacific Railroad Company the usual and customary sums paid by one railroad company to another for the use of the like property, and that the amounts so credited shall be deemed and taken to be a part of the earnings of said Central Pacific Railroad Company.

And it is further agreed that if, in the operation of said Central Pacific Railroad and leased roads north of Goshen, it becomes necessary to use any of the rolling stock or other personal property of the Southern Pacific Company, not leased from the Central Pacific Railroad Company, upon the said Central Pacific Railroad or leased roads north of Goshen, that the usual and customary sums paid by one railroad company to another for the use of like property, shall be allowed as, and constitute a charge against, the receipts of the said Central Pacific Railroad and said leased lines, and be so considered in the accounting hereinbefore provided for.

6470 In testimony whereof, the said Southern Pacific Company and the said Central Pacific Railroad Company have caused

these presents to be signed by their respective presidents, countersigned by their secretaries, and their corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, the day and year first herein written.

In duplicate.

(S. P. Co. Corporate Seal.) W. E. BROWN,
President Southern Pacific Co.

H. C. NASH,
Secretary Southern Pacific Co.

(C. P. R. R. Co. Corporate Seal.) LELAND STANFORD,
President Central Pacific Railroad Co.

E. H. MILLER, JR.,
Secretary Central Pacific Railroad Co.

6471 CENTRAL PACIFIC RAILROAD COMPANY TO THE SOUTHERN PACIFIC COMPANY.

Modification of Lease.

This agreement made and entered into this first day of January, 1888, by and between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and the Central Pacific Railroad Company, a corporation duly formed and existing under the laws of the State of California and the United States:

Whereas heretofore and under date of February 17, 1885, an agreement of lease was made and executed by and between the parties hereto; and

Whereas since the date of the execution of such lease the lines of railroad of the Central Pacific Railroad Company have been extended from Delta, in the State of California, to the boundary line between the States of California and Oregon, forming at the last-mentioned point a connection with the line of railroad of the Oregon and California Railroad Company; and

Whereas since the execution of such lease, and in or about December, 1887, the said line of railroad to the boundary line between the states of California and Oregon, constituting part of the line from San Francisco, in California, to Portland, in Oregon, has been delivered by the Central Pacific Railroad Company to the Southern Pacific Company for operation, and the railroad properties operated by the Southern Pacific Company as lessee of the Central Pacific Railroad have been materially changed; and

6472 Whereas by reason of the premises the Central Pacific Railroad Company has requested a modification of the terms and provisions of the agreement of lease above referred to;

Now, Therefore, This Agreement Witnesseth: That in consideration of the premises and of the sum of one dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto have undertaken, covenanted, and

agreed, and do hereby undertake, covenant, and agree to and with each other, as follows, that is to say:

That the said Southern Pacific Company, in lieu and stead of and substitution for the payment of rental by it to said Central Pacific Railroad Company as in said lease prescribed, shall pay to the said Central Pacific Railroad Company, on the first Monday in May, 1889, and on each first Monday of May thereafter during the continuance of said lease, as guaranteed rental for the year ending on December 31st next preceding that date, the sum of one million three hundred and sixty thousand dollars ($1,360,000) instead of the sum of one million two hundred thousand dollars ($1,200,000) which is in said original agreement prescribed, and is to be paid on the first day of May, 1888, in respect of the year ending December 31, 1887, and will pay to the Central Pacific Railroad Company on the first Monday of May in each year, as additional rental for the year terminating on December 31st, preceding, any excess up to but not beyond the sum of two million seven hundred and twenty thousand dollars of the earnings in such preceding year of the said Central Pacific Railroad above the expenditures, payments, and dis-
6473 bursements of every kind made by the Southern Pacific Company in operating, maintaining, adding to or bettering the same, or for taxes, rentals, interest, or in discharge of any of the obligations of said Southern Pacific Company incurred under said agreement of lease, or as the same is hereby modified, including the guaranteed rental above mentioned, and that the said agreement of lease shall be and is hereby modified accordingly.

In witness whereof the parties hereto have caused these presents to be signed by their respective second vice-presidents and countersigned by their respective secretaries, and their respective corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, the day and year first above written.

(S. P. Co. Corporate Seal.) CHAS. CROCKER,
Second Vice-President Southern Pacific Company.

G. L. LANSING,
Secretary Southern Pacific Company.

(C. P. R. R. Co. Corporate Seal.) CHAS. CROCKER,
Second Vice-President Central Pacific Company.

E. H. MILLER,
Secretary Central Pacific Co.

6474 *Amendment to Lease between Central Pacific Railroad Company and Southern Pacific Company.*

This indenture, made and entered into this seventh day of December, eighteen hundred and ninety-three, by and between the Central Pacific Railroad Company of the first part and the Southern Pacific Company of the second part.

Whereas, heretofore and under date of the 17th day of February, 1885, an agreement of lease was made and entered into by and between the parties hereto, which agreement of lease was afterwards modified by agreement between the same parties bearing date the first day of January, 1888; and

Whereas, the operation of the demised properties under such lease has resulted in very considerable losses to the said Southern Pacific Company, and it thereby appears that by the operation of said agreement the said Central Pacific Railroad Company has been and is being benefited at the expense of the Southern Pacific Company, and a necessity has therefore arisen for a revision and change of such lease so that neither party thereto shall be benefited at the expense of the other;

Now, therefore, this instrument witnesseth: That in consideration of the premises such agreement of lease has been and is hereby revised and changed by the parties hereto by substituting on and after the first day of January, 1894, for the existing provisions of such lease, as so modified as aforesaid, the terms, provisions, and conditions hereinafter provided and expressed, that is to say:

First. The party of the first part hereby leases to the
6475 party of the second part for the period of ninety years from and including the first day of January next, the railroads of the party of the first part, together with its branches and leased lines, and all depots and station houses, equipments, and appurtenances of every kind and nature whatsoever to the said railroads, branches, and leased lines respectively belonging or appertaining.

Second. The party of the second part will pay to the party of the first part a fixed yearly rental for the premises so leased, amounting to the sum of ten thousand dollars per annum, which rental shall be paid in four equal installments of twenty-five hundred dollars each on the first days of January, April, July, and October of each year during the pendency of this lease (excepting only the first day of January, eighteen hundred and ninety-four), it being understood and agreed that the amount of such rental, so far as requisite, shall be appropriated and applied by the party of the first part to the expenses of maintaining and keeping up its corporate organization.

Third. The party of the second part is to operate the said railroads, branches, and leased lines hereinbefore referred to. The said lessee shall apply the earnings and income derived therefrom to paying all operating expenses thereof and the incidental expenses connected therewith, including the sums payable for rentals of leased lines, and, according to their lawful priorities, to the payment of the current interest and sinking fund contributions or other payments from time to time becoming due and payable from the said Central
Pacific Railroad Company, whether to the United States of
6476 America or to bondholders or others, during the existence of this lease.

And it is further provided and agreed by and between the parties hereto that on the first day of April in each year during the con-

tinuance of this lease the party of the second part shall pay to the party of the first part such balance, if any, of the net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for the year ending on the 31st day of December then next preceding, as shall remain in its hands after all the payments hereinbefore provided for or agreed or directed are made: Provided, however, That if at the time, viz, such 1st day of April, when such balance of such income or rental is provided to be paid to the party of the first part, there shall be any sum due or owing from the party of the first part to the party of the second part for or in respect of advances or payments theretofore made by the party of the second part to or for or upon the request of the party of the first part for new additions or improvements to the demised premises, or any part thereof, or for expenses of keeping up the corporate organization of the party of the first part, or maintaining agencies for the transfer of its stock and bonds, or for any expenses of its business or affairs other than such as fall within the payments before provided to be made by the lessee out of the earnings or income, or for or in respect of any other sums which may have been lawfully advanced or paid by the lessee to or for the party of the first part, the party of the second part shall be entitled to retain and pay to itself whatever may be owing to it from the party of the first part
6477 for or in respect of any of the causes or matters or considerations aforesaid, including any interest which may be due or owing from the party of the first part to the party of the second part thereon.

And provided further, That if such balance of net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for any year, and which by the foregoing provisions hereof would be and become payable by said party of the second part to said party of the first part, shall exceed the amount of six per cent. per annum upon the par value of the then existing capital stock of the party of the first part, then and in that event the said party of the second part shall be entitled to and shall retain to itself for its own use one-half part of any and all excess of such balance of net earnings and income over and above the amount of six per cent. per annum upon the par value of the then existing capital stock of the party of the first part.

Fourth. If and so far as the party of the second part shall make any advances for payments for account of the party of the first part, the party of the second part shall be entitled to receive interest upon all such advances at the rate of six per cent. per annum from the making until the reimbursement thereof, and the party of the second part shall have a lien for such advances, and the interest thereon, upon the said demised premises and the income thereof until such advances are reimbursed, with interest, and the party of the second part shall be entitled at any time and from time to time to refund

to itself such advances and interest out of any net earnings
6478 or income of the demised premises which may be in its hands, unless it shall have been expressly agreed between the parties hereto to the contrary, in writing, at or before the making of such advances.

Fifth. The agreements between the same parties dated February 17, 1885, and January 1, 1888, respectively, are hereby cancelled, except so far as they relate to operation of said demised premises prior to January 1, 1894, and adjustment of accounts in respect to such operation thereof.

Sixth. This indenture may be at any time modified in any of its terms or provisions or cancelled by agreement of the parties thereto.

In witness whereof the parties hereto have hereunto respectively affixed their corporate seals and caused these presents to be signed by their respective presidents and attested by their respective secretaries the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,
[SEAL.] By H. E. HUNTINGTON, *President.*
Attest:
W. M. THOMPSON,
Secretary.

SOUTHERN PACIFIC COMPANY,
[SEAL.] By C. P. HUNTINGTON, *President.*
Attest:
G. L. LANSING,
Secretary.

6479 BETWEEN CENTRAL PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY.

Agreement.

Indenture made and entered into this twenty-second day of March, 1894, by and between Central Pacific Railroad Company, of the first part, and the Southern Pacific Company, of the second part.

Whereas heretofore and under date of the 7th day of December, 1893, an indenture was made and entered into by and between the parties hereto, revising and changing the then existing agreement of lease between said parties, as by said indenture, dated the 7th day of December 1893, by reference thereto will fully and at large appear; and

Whereas it has been suggested, on behalf of the Central Pacific Railroad Company, that such last-mentioned indenture should be modified as hereinafter provided, and the Southern Pacific Company has assented to such proposed modification thereof;

Now, therefore, this indenture witnesseth: That in consideration of the premises the parties hereto have undertaken, covenanted, and agreed, and do hereby undertake, covenant, and agree, to and with each other as follows, viz:

First. The said indenture, dated the 7th day of December, 1893, is hereby modified by substituting in lieu of article fourth of said indenture the following article, that is to say:

Fourth. If and so far as the party of the second part shall make any advances for payments for account of the party of the first
6480 part, the party of the second part shall be entitled to receive lawful interest upon all such advances from the making until the reimbursement thereof, and the party of the second part shall be entitled at any time and from time to time to refund to itself such advances and interest out of any net earnings or income of the demised premises which may be in its hands, unless it shall have been expressly agreed between the parties hereto to the contrary in writing at or before the making of such advances.

And it is further agreed between said Central Pacific Railroad Company and said Southern Pacific Company that if at any time it appears that by the operation of this agreement either party is being benefited at the expense of the other, then this agreement shall be revised and changed so that such will not be the operation thereof, and if the parties hereto can not agree upon the changes necessary to that end, then each party shall appoint one arbitrator, disinterested, but skilled in relation to the subject-matter, and the award and decision of such arbitrators in writing shall be binding upon the parties hereto, and this agreement shall be revised and changed in accordance with such award and decision, and, as revised and changed, shall be duly executed in writing by the parties hereto.

And it is further agreed that if the arbitrators so chosen can not agree upon an award and decision, then that the two shall choose a third impartial and skilled arbitrator, and that the award and decision of two of said three arbitrators shall have the same force and effect between the parties hereto, and shall be executed in like manner as hereinbefore provided for the award and decision of the two arbitrators first chosen.

6481 Second. The said indenture, dated the 7th day of December, 1893, as so modified by the first article hereof, is hereby in all respects ratified, approved, and confirmed.

In witness whereof the parties hereto have hereunto respectively affixed their corporate seals and caused these presents to be signed by their respective presidents and attested by their respective secretaries the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,
By ISAAC L. REQUA, *President.*

(C. P. R. R. Co. corporate seal.)

Attest:

W. M. THOMPSON, *Secretary.*

SOUTHERN PACIFIC COMPANY,
By C. P. HUNTINGTON, *President.*

(S. P. Co. corporate seal.)

Attest:

G. L. LANSING, *Secretary.*

6482 This Agreement, made and entered into this 15th day of April, A. D. 1897, by and between the Central Pacific Railroad Company, of the first part, and the Southern Pacific Company, of the second part,

Witnesseth:

That whereas, under existing arrangements between the parties hereto, it has been the practice that on the first day of April in each year while operating the railroad of the party of the first part, the party of the second part should pay to the party of the first part such balance of income or earnings of the railroad, with the appurtenances, received by the party of the second part for the year ending on the 31st day of December, then next preceding, as should remain in the hands of the party of the second part after the deduction of certain charges and expenses.

And whereas, it is to the convenience of both of said parties to change the dates of said accountings and settlements so as to conform to the reports required by the Interstate Commerce Commission and other governmental bodies and officers, by adopting as the basis therefor a fiscal year ending June 30th of each year, instead of December 31st:

Now, therefore, it is hereby agreed by and between the parties hereto that hereafter all said balances shall be paid on the first day of November of each year, and shall be for and on account of the year ending on the 30th day of June then next preceding, except that in the first settlement which shall be made under this agreement, to wit:

6483 that of November 1st, 1897, such settlement shall be made upon an accounting for the whole period from January 1st, 1896, to June 30th, 1897, both days inclusive.

In witness whereof, the said parties have caused these presents to be signed by their respective presidents or vice-presidents, and secretaries, under their several corporate seals, the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,
By ISAAC L. REQUA, *President.*

(Corporate Seal.)

W. M. THOMPSON, *Secretary.*
SOUTHERN PACIFIC COMPANY,
By C. P. HUNTINGTON, *President.*

(Corporate Seal.)

E. C. WRIGHT, *Secretary.*

6484 Mr. LOVETT. I offer in evidence Defendants' Exhibit 41, being copy of indenture made August 1, 1899, between Southern Pacific Company and Central Trust Company of New York, subordinating lease to lien of Central Pacific Railway Company's first refunding mortgage.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 41 is as follows:

DEFENDANTS' EXHIBIT 41.

SOUTHERN PACIFIC COMPANY TO CENTRAL TRUST COMPANY OF NEW YORK, TRUSTEE.

INDENTURE SUBORDINATING LEASE TO LIEN OF CENTRAL PACIFIC RAILWAY COMPANY'S FIRST REFUNDNG MORTGAGE.

Dated August 1st, 1899.

An indenture, made the 1st day of August, 1899, by and between the Southern Pacific Company, a corporation of the State of Kentucky, party of the first part, and the Central Trust Company of New York, a corporation of the State of New York, party of the second part.

Whereas, the Central Pacific Railway Company (a corporation of the State of Utah) has, under even date herewith, executed an indenture to the party of the second part to secure the issue of First Refunding Mortgage Gold Bonds of the said Central Pacific
6485 Railway Company, issued and to be issued for an aggregate principal sum not exceeding one hundred million dollars ($100,000,000) at any one time outstanding, as by said mortgage, reference thereto being had, will more fully appear; and,

Whereas, the properties covered by said mortgage have heretofore been and still are in possession of the party of the first part as lessee thereof; and,

Whereas, in consideration of the benefits and advantages to be derived by said party of the first part from the carrying out of the agreement between the United States of America, the Central Pacific Railroad Company and Messrs. Speyer & Co., dated February 1, 1899, in reference to the settlement of the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, the party of the first part hereto has agreed to subordinate its rights as lessee of said railroads to the lien of the said mortgage securing such First Refunding Mortgage Gold Bonds;

Now, therefore, this indenture witnesseth: that in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part in hand paid, the receipt whereof is hereby acknowledged, the said party of the first part has undertaken, covenanted and agreed, and does hereby undertake, covenant and agree, that the said mortgage from the Central Pacific Railway Company to the party of the second part, dated August 1, 1899, securing the said First Refunding Mortgage Gold Bonds of
6486 said Central Pacific Railway Company, shall be, and shall be deemed and held to be, prior in lien to any lease of the railroads formerly of the Central Pacific Railroad Company (but now

transferred to the said Central Pacific Railway Company), or their appurtenances or any portion thereof, and that the lease of said railroads and their appurtenances to the party of the first part be, and the same is hereby, subordinated in lien to the said mortgage of the said Central Pacific Railway Company to the party of the second part securing such First Refunding Mortgage Gold Bonds.

In Witness Whereof, the said party of the first part hereto has caused its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Secretary, and has caused these presents to be signed on its behalf by its President or one of its Vice-Presidents, the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By C. P. HUNTINGTON, *President.*

(Seal of Southern Pacific Company.)
Attest:
I. E. GATES,
Asst. Secretary.

6487 STATE OF NEW YORK,
City and County of New York, } *ss.:*

Be it remembered, that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a Commissioner, resident in the City of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Utah, to take acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Collis P. Huntington, and Isaac E. Gates, who, being by me respectively duly sworn, each for himself, says that he, the said Collis P. Huntington, is the president of the Southern Pacific Company, and the said Isaac E. Gates is the Assistant Secretary, of said Company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said President and Assistant Secretary respectively, under and in pursuance of a resolution of its Board of Directors; and the said Huntington and Gates respectively acknowledged to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Utah.
Office, 56 Wall Street, N. Y.

(Commissioner's Seal.)
My commission expires January 5, 1902.

6488 STATE OF NEW YORK,
City and County of New York, } *ss.:*

Be it remembered, that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a Commissioner, resident in the City of

New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Nevada, to take acknowledgment of deeds, &c., to be used or recorded therein, personally appeared the within named Collis P. Huntington, President of the Southern Pacific Company, and Isaac E. Gates, Assistant Secretary of the Southern Pacific Company, personally known to me to be the said officers of the said corporation respectively, and the individuals described in and who executed the within instrument, as such officers of said Company, and they each, severally and personally, then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Southern Pacific Company, freely and voluntarily, and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Nevada.
Office, 56 Wall Street, N. Y.

(Commissioner's Seal.)
My Commission expires January 23, 1900.

6489 STATE OF NEW YORK,
City and County of New York. } ss:

Be it remembered that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a Commissioner, resident in the City of New York, duly commissioned and qualified by the executive authority and under the laws of the State of California to take acknowledgment of deeds, and so forth, to be used or recorded therein, personally appeared Collis P. Huntington, known to me to be the President, and Isaac E. Gates, known to me to be the Assistant Secretary of the Southern Pacific Company, the corporation described in and which executed the within and annexed instrument, and acknowledged to me that said corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of California.
(Commissioner's Seal.) *Office, 56 Wall Street, N. Y.*
My commission expires October 28, 1899.

6490 Mr. LOVETT. I offer in evidence Defendants' Exhibit 42, being copy of indenture made August 1, 1899, between Southern Pacific Company and United States Trust Company, subordinating lease to lien of Central Pacific Railway Company's three and one-half per cent. mortgage.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 42 is as follows:

DEFENDANTS' EXHIBIT 42.

SOUTHERN PACIFIC COMPANY TO UNITED STATES TRUST COMPANY, TRUSTEE.

INDENTURE SUBORDINATING LEASE TO LIEN OF CENTRAL PACIFIC RAILWAY COMPANY'S THREE AND ONE-HALF PER CENT. MORTGAGE.

Dated August 1st, 1899.

An Indenture, made the 1st day of August, 1899, by and between the Southern Pacific Company, a corporation of the State of Kentucky, party of the first part, and the United States Trust Company of New York, a corporation of the State of New York, party of the second part.

Whereas, the Central Pacific Railway Company (a corporation of the State of Utah) has, under even date herewith, executed an indenture to the party of the second part to secure the issue of Three
6491 and One-Half Per Cent. Mortgage Gold Bonds of the said Central Pacific Railway Company, issued and to be issued for an aggregate principal sum not exceeding twenty-five million dollars ($25,000,000) at any one time outstanding, as by said mortgage, reference thereto being had, will more fully appear; and,

Whereas, the railroads and their appurtenances covered by said mortgage have heretofore been and still are in possession of the party of the first part as lessee thereof; and,

Whereas, in consideration of the benefits and advantages to be derived therefrom, the party of the first part hereto has agreed to subordinate its rights as lessee of said railroads to the lien of the said mortgage securing such Three and One-Half Per Cent. Mortgage Gold Bonds;

Now, Therefore, This Indenture Witnesseth: That in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part in hand paid, the receipt whereof is hereby acknowledged, the said party of the first part has undertaken, covenanted and agreed, and does hereby undertake, covenant and agree, that the said mortgage from the Central Pacific Railway Company to the party of the second part, dated August 1, 1899, securing the said Three and One Half Per Cent. Mortgage Gold Bonds of said Central Pacific Railway Company shall be, and shall be deemed and held to be, prior in lien to any lease of the railroads formerly of the Central Pacific Railroad Company (but now transferred to the said Central Pacific Railway Company) or their appurtenances or any portion thereof, and that the lease of said railroads and their appurtenances to the party of the first part be, and the same is hereby, subordinated in lien to the said mortgage of
6492 the said Central Pacific Railway Company to the party of the

second part securing such Three and One-Half Per Cent. Mortgage Gold Bonds.

In Witness Whereof, the said party of the first part hereto has caused its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Secretary, and has caused these presents to be signed on its behalf by its President or one of its Vice-Presidents, the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By C. P. HUNTINGTON, *President.*

(Seal of Southern Pacific Company.)

Attest:
I. E. GATES, *Asst. Secretary.*

6493 STATE OF NEW YORK,
City and County of New York, } ss.:

Be it remembered, that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a Commissioner, resident in the City of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Utah to take acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Collis P. Huntington and Isaac E. Gates, who, being by me respectively duly sworn, each for himself says that he, the said Collis P. Huntington, is the President of the Southern Pacific Company, and the said Isaac E. Gates is the Assistant Secretary, of said Company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said President and Assistant Secretary respectively, under and in pursuance of a resolution of its Board of Directors; and the said Huntington and Gates respectively acknowledged to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Utah.
Office, 56 Wall Street, N. Y.

(Commissioner's Seal.)
My commission expires January 5, 1902.

6494 STATE OF NEW YORK,
City and County of New York, } ss.:

Be it remembered, that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a Commissioner, resident in the City of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Nevada, to take acknowl-

edgment of deeds, &c., to be used or recorded therein, personally appeared the within-named Collis P. Huntington, President of the Southern Pacific Company, and Isaac E. Gates, Assistant Secretary of the Southern Pacific Company, personally known to me to be the said officers of the said corporation respectively, and the individuals described in and who executed the within instrument, as such officers of said Company, and they each severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Southern Pacific Company, freely and voluntarily, and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Nevada.
Office, 56 Wall Street, N. Y.

(Commissioner's Seal.)
My commission expires January 23, 1900.

6495 STATE OF NEW YORK,
City and County of New York, } *ss.:*

Be it remembered, that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a Commissioner, resident in the City of New York, duly commissioned and qualified by the executive authority and under the laws of the State of California to take acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Collis P. Huntington, known to me to be the President, and Isaac E. Gates, known to me to be the Assistant Secretary of the Southern Pacific Company, the corporation described in and which executed the within and annexed instrument, and acknowledged to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of California.
Office, 56 Wall Street, N. Y.

(Commissioner's Seal.)
My Commission expires October 28, 1899.

6496 Mr. LOVETT: I offer in evidence Defendants' Exhibit 43, being copy of collateral trust mortgage of the Southern Pacific Company to the Union Trust Company of New York, trustee, dated August 1, 1899.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 43 is as follows:

DEFENDANTS' EXHIBIT 43.

SOUTHERN PACIFIC COMPANY TO UNION TRUST COMPANY OF NEW YORK, TRUSTEE.

FOUR PER CENT. MORTGAGE.

(Central Pacific Stock Collateral.)

Dated August 1st, 1899.

($14,409.25 Internal Revenue Stamps affixed and cancelled.)

This Indenture, made the first day of August, A. D. 1899, by and between the Southern Pacific Company, a corporation created, organized and existing under and by virtue of the laws of the State of Kentucky, party of the first part, and the Union Trust Company of New York, a corporation created, organized and existing under and by virtue of the laws of the State of New York, party of the second part,

Witnesseth:

Whereas, the party of the first part, in pursuance of its corporate powers, has acquired, and now holds, the Preferred and
6497 Common Stock hereinafter described of the Central Pacific Railway Company, a corporation created, organized and existing under the laws of the State of Utah; and,

Whereas, the party of the first part is about to issue (to the amounts and within the limits hereinafter prescribed on that behalf) its Four Per Cent. Gold Bonds to be designated as Four Per Cent. Gold Bonds—Central Pacific Stock Collateral—in the general forms following, that is to say:

(Form of Coupon Bond.)

No. ____ $1,000 (or $500).

United States of America.

SOUTHERN PACIFIC COMPANY.

FOUR PER CENT. GOLD BOND.

Central Pacific Stock Collateral.

Know all Men by these Presents, That the Southern Pacific Company, for value received promises to pay to the bearer, or, if registered, to the registered holder, of this bond, on the first day of August, nineteen hundred and forty-nine, at the office or agency of the Southern Pacific Company, in the City of New York, One Thou-

sand (or Five Hundred) Dollars, gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon at the rate of four per cent. per annum from August 1, 1899, payable semi-annually, at the said office or agency, in like gold coin, on the first day of June and the first day of December in each year, but only upon presentation and surrender, as they severally mature, of the coupons therefor annexed hereto.

The right is reserved to the Southern Pacific Company
6498 and its successors, at its or their option, to redeem this bond at par and accrued interest thereon, upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned, and the interest upon this bond shall cease at the time for which the same shall have been so called for redemption, as provided in said mortgage or deed of trust.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Southern Pacific Company may be required to pay, or to retain therefrom, under any present or future law of the United States, or of any State or County or Municipality therein.

This bond is one of a series of Four Per Cent. Gold Bonds—Central Pacific Stock Collateral—(coupon and registered) of the Southern Pacific Company, issued and to be issued for an aggregate principal sum not exceeding thirty-six million eight hundred and nineteen thousand dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of trust dated August 1st, 1899, executed by the Southern Pacific Company to the Union Trust Company of New York, as Trustee, covering the Preferred and Common Stock of the Central Pacific Railway Company, pledged or to be pledged by said mortgage or deed of trust, to which reference is hereby made for a statement of the stock so mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond shall pass by delivery unless registered in the owner's name on the books of the Southern Pacific Company at
6499 its office or agency in the City of New York, such registry being noted on the bond by the Bond Registrar of the Southern Pacific Company. After such registration, no transfer shall be valid unless made on the Company's books by the registered owner and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

The holder may also, at his option, surrender for cancellation this bond, with the coupons for future interest thereon, in exchange for

a registered bond without coupons, as provided in said mortgage or deed of trust.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage or deed of trust.

In Witness Whereof, the Southern Pacific Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, and coupons for said interest, with the engraved signature of its Treasurer, to be attached hereto, this first day of August, 1899.

(The Mortgage or Deed of Trust securing this Bond has been duly stamped according to law.)

6500 SOUTHERN PACIFIC COMPANY,

By _____,
Vice-President.

(L. S.)
Attest:

_____,
Assistant Secretary.

(*Form of Interest Coupon.*)

No. ____ $20 (or $10).

On the first day of _____, the Southern Pacific Company will pay to bearer, at its office or agency in the City of New York, Twenty (or Ten) Dollars United States Gold coin of the present standard of weight and fineness, without deduction for taxes, being six months' interest then due on its Four Per Cent. Gold Bond—Central Pacific Stock Collateral—No. ____

_____,
Treasurer.

6501 (*Form of Registered Bond.*)

No. ____ $_____

United States of America.

SOUTHERN PACIFIC COMPANY.

FOUR PER CENT. GOLD BOND.

Central Pacific Stock Collateral.

Know all Men by these Presents, That the Southern Pacific Company, for value received, promises to pay to _____ or registered assigns, the sum of _____ Dollars, gold coin of the United States, of the present standard of weight and fineness, on the first day of

August, nineteen hundred and forty-nine, at the office or agency of the Southern Pacific Company in the City of New York, and to pay interest thereon at the rate of four per cent. per annum from the first day of June or December next preceding the date hereof, payable semi-annually at the said office or agency, in like gold coin, on the first day of June and the first day of December in each year, until the payment of said principal sum.

The right is reserved to the Southern Pacific Company and its successors, at its or their option, to redeem this bond at par and accrued interest thereon, upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned, and the interest upon this bond shall cease at the time for which the same shall have been so called for redemption, as provided in said mortgage or deed of trust.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Southern Pacific
6502 Company may be required to pay, or to retain therefrom, under any present or future law of the United States, or of any State or County or Municipality therein.

This bond is one of a series of Four Per Cent. Gold Bonds—Central Pacific Stock Collateral—(coupon and registered) of the Southern Pacific Company, issued and to be issued for an aggregate principal sum not exceeding thirty-six million eight hundred and nineteen thousand dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of trust August 1st, 1899, executed by the Southern Pacific Company to the Union Trust Company of New York, as Trustee, covering the Preferred and Common Stock of the Central Pacific Railway Company pledged or to be pledged by said mortgage or deed of trust, to which reference is hereby made for a statement of the stock so mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof in person, or by attorney duly authorized, on the books of the Southern Pacific Company, at its office or agency in the City of New York, upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange herefor, as provided in said mortgage or deed of trust, and on payment, if the Southern Pacific Company shall so require, of the charge therein provided for.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage or deed of trust.

6503 In Witness Whereof, the Southern Pacific Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by its Secretary or an Assistant Secretary, this ------ day of ----------

(The Mortgage or Deed of Trust securing this bond has been duly stamped according to law.)

SOUTHERN PACIFIC COMPANY,

By ----------,

(L. S.)

Attest: *Vice-President.*

----------,

Assistant Secretary.

(*Form of Trustee's Certificate.*)

This bond is one of a series of bonds described in the within-mentioned mortgage or deed of trust executed by the Southern Pacific Company to the undersigned.

UNION TRUST COMPANY OF NEW YORK,

Trustee.

By ----------, *Vice-President.*

Whereas, the said bonds of the party of the first part so to be issued as aforesaid are to be secured by the pledge and deposit with the Trustee hereunder of the said Preferred and Common Stock of the Central Pacific Railway Company, and of such Preferred and Common Stock of the last-mentioned Company as may be hereafter deposited hereunder with the said Trustee; and,

6504 Whereas, at a meeting of the Board of Directors of the party of the first part, duly called, and held on the nineteenth day of September, 1899, the following resolutions were adopted, that is to say:

Resolved, That for the corporate purposes of the Company, this Company issue its bonds to be known as "Four Per Cent. Gold Bonds—Central Pacific Stock Collateral"—to an amount which shall not in any event exceed in the aggregate the principal sum of $36,819,000 at any one time outstanding. Such bonds shall bear date August 1, 1899, in the case of coupon bonds, and of the time of their issue in the case of registered bonds, shall become and be payable on the first day of August, 1949, in gold coin of the United States of the present standard of weight and fineness, and shall bear interest at a rate not exceeding four per centum per annum, payable semi-annually in like gold coin on the first day of June and the first day of December in each year, but shall be subject to the right on behalf of the Company and its successors at its and their option to redeem the same at par and accrued interest thereon upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned. Said bonds shall be issued either as coupon or registered bonds. The coupon bonds shall be for the principal sum of one thousand dollars or five hundred dollars each, and shall give to the holders the right to register the principal thereof, and also the right to convert the same into fully registered bonds. The registered bonds without coupons

shall be each for the principal sum of one thousand dollars, or such multiples thereof as the Company by resolution of its Board of
6505 Directors may from time to time prescribe, and may be issued originally either as registered bonds or in exchange for coupon bonds for an equivalent sum. Such bonds, whether coupon bonds or registered bonds, shall be issued as shall be determined by the action of the Board of Directors or the Executive Committee of the Company at such times and to such amounts as the purposes for which they are to be issued may require. When issued such bonds shall be signed by the President or any Vice-President of the Company, and the corporate seal shall be thereunto affixed and attested by the Secretary or any Assistant Secretary. In case the officers who shall have signed and sealed any such bonds shall cease to be officers of the Company before the bonds so signed and sealed shall have been actually issued, certified and delivered, such bonds may nevertheless be adopted and used by the Company, and may be issued, certified and delivered as though the persons who signed and sealed such bonds had not ceased to be officers of the Company. There shall be attached to the coupon bonds coupons for the interest to grow due thereon, authenticated by the engraved signature of the Treasurer or of any future Treasurer of the Company: and the Company may adopt and use for that purpose the engraved signature of any person who shall have been such Treasurer, notwithstanding the fact that such person may have ceased to be such Treasurer when such bonds shall have been actually issued, certified and delivered.

Resolved, further, That in order to secure the payment of said bonds issued and to be issued, with interest thereon, this Company execute a mortgage or deed of trust to the Union Trust Company of New York, a corporation of the State of New York, as
6506 Trustee, covering the Preferred and Common Stock of the Central Pacific Railway Company described in the printed form of mortgage now submitted to this board.

Resolved, further, That the said printed form of mortgage now submitted to the Board, and the forms of Bonds embodied therein, be, and the same are hereby, approved, and that the President, or any Vice-President, and the Secretary, or any Assistant Secretary, be, and they are hereby, authorized to execute and deliver the same on behalf of the Company under its corporate seal.

Now, therefore, The said parties hereto, in consideration of the premises and of one dollar to each by the other in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, do each covenant, promise and agree, for themselves and their respective successors and assigns, in manner and form following—that is to say:

First. The said party of the first part has simultaneously with the execution hereof pledged and deposited with the said party of the second part certificates duly issued to and in the name of the party of the first part or its nominees, and assigned by it or them in blank,

with irrevocable power to transfer the same, representing Preferred and Common Stock of the Central Pacific Railway Company to the following amounts respectively, that is to say:

1. Preferred Stock to the amount at its face value of twelve million dollars ($12,000,000).

2. Common Stock to the amount at its face value of
6507 sixty-seven million two hundred and seventy-four thousand two hundred dollars ($67,274,200).

The said certificates so pledged and deposited with the party of the second part are to be held by the said party of the second part and its successors in this trust, subject to the reservations, terms and conditions hereinafter expressed, upon trust for the benefit of the several persons and corporations who shall be or become holders respectively of any of the bonds issued or to be issued hereunder by the party of the first part or its successors, to secure to such holders equally and without preference of one over another, by reason of priority of time of issue thereof or otherwise, the due and punctual payment of the said bonds and the interest thereon as it shall become due, according to the tenor and effect of the said bonds and the interest coupons attached thereto.

Second. The said party of the first part further covenants and agrees that it will, and its successors and assigns shall, in like manner, from time to time, pledge and deposit with the said party of the second part, or its successors in this trust, further certificates issued to and in the name of the party of the first part, or its successors, or its or their nominees, and assigned by it or them in blank, with irrevocable power to transfer the same, representing Preferred Stock of the said Central Pacific Railway Company, not exceeding in the aggregate eight million dollars ($8,000,000), when the same shall have been delivered to the party of the first part, or its successors or assigns, from time to time in consideration of the issue here-
6508 under by said party of the first part, or its successors, of bonds not exceeding the like amount, as provided in Clauses 2 and 3 of Article Third of this indenture, such deposits to be made promptly from time to time as soon as practicable after the acquisition of such Preferred Stock by the party of the first part, or its successors or assigns, the same to be held by the said party of the second part and its successors in this trust for the uses and purposes, and upon the trusts, and subject to the reservations, terms and conditions, set forth and declared in this indenture.

Third. The party of the second part and its successors in the trust hereby created is and are to authenticate and certify as issued hereunder, and deliver to the party of the first part, its successors or assigns, or upon its or their order, bonds of the party of the first part or its successors, in the forms or substantially the forms above prescribed, to the amounts and upon the conditions hereinafter stated, and not otherwise, that is to say:

1. Bonds to the amount, at their face value, of twenty-eight million eight hundred and eighteen thousand five hundred dollars

($28,818,500), simultaneously with the deposit with the Trustee hereunder of the certificates referred to in Article First hereof, representing twelve million dollars ($12,000,000) par value, Preferred Stock, and sixty-seven million two hundred and seventy-four thousand two hundred dollars ($67,274,200), par value, Common Stock, of the said Central Pacific Railway Company.

2. Bonds to the further amount of three million dollars ($3,-
6509 000,000), at their face value, to be reserved by the party of the first part, or its successors, (a) to be used to provide additional funds, if required, for the payment from time to time of any of the twenty promissory notes for $2,940,635.78 each, heretofore delivered to the United States under a Settlement Agreement between the United States of America, the Central Pacific Railroad Company and Messrs. Speyer & Co., dated February 1, 1899; or (b) when such notes shall have been paid, to be applied at their market value to provide for payment for, or the reimbursement of, the cost of betterments and additions to the properties of the Central Pacific Railway Company, covered by the mortgages securing its First Refunding and Three And One-Half Per Cent. Mortgage Bonds, as such cost shall be certified by the President or Vice-President and Chief-Engineer of the Central Pacific Railway Company.

3. Bonds to the further amount of five million dollars ($5,000,000), at their face value, to be reserved by the party of the first part, or its successors, to be applied at their market value to provide for payment for, or reimbursement of, the cost of betterments and additions to the said properties of the Central Pacific Railway Company, as such cost shall be certified by the President or Vice-President and Chief-Engineer of the said Railway Company; but the amount of such additional bonds so to be applied under Clause 3 hereof shall not at any time exceed at their face value two hundred thousand dollars per annum from the date of this indenture.

When and as any such bonds are issued by said party of the first part, or its successors, under Clause 2 or 3 hereof, the like
6510 amounts at their par value of Preferred Stock of the Central Pacific Railway Company are to be received by it or them in consideration therefor, and are to be forthwith deposited with the Trustee hereunder, to be held by the said Trustee for the uses and purposes and upon the trusts and subject to the reservations, terms and conditions set forth and declared in this indenture.

The party of the first part hereby covenants and agrees with the party of the second part and with the holders of the bonds intended to be secured by this indenture that the said bonds and their proceeds shall be used and applied only to the objects and purposes above specified.

All the above bonds authenticated in compliance with the provisions of this indenture shall be equally secured hereby without regard to the time or times when the said bonds shall have been actually issued or otherwise, and without any discrimination or preference of one over another.

Any of the foregoing bonds from time to time, at the option of the party of the first part or its successors, may be executed, authenticated and certified originally either as coupon bonds or as registered bonds, but the aggregate amount of the bonds issued and outstanding under this indenture shall never at any one time exceed the principal sum of thirty-six million eight hundred and nineteen thousand dollars ($36,819,000).

Only such bonds as shall bear thereon endorsed a certificate of the Trustee hereunder by it duly executed under the hand of its President or a Vice-President thereof shall be secured by this indenture or shall be entitled to any lien or benefit thereunder, and every
6511 such certificate of the said Trustee upon any bond executed in behalf of the party of the first part, or its successors, shall be conclusive evidence that the bond so certified has been duly issued hereunder and is entitled to the benefit of the trust hereby created.

Before certifying or delivering any coupon bond hereby secured, the Trustee hereunder shall cut off and cancel all coupons thereof then matured, and the said trustee shall not certify or deliver any registered bond bearing interest from any date more than six months prior to such certification or delivery.

Whenever any coupon bond or bonds issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds, the party of the first part, or its successors, shall issue, and the said Trustee shall certify and deliver, in exchange for such coupon bond or bonds, a like amount of registered bonds without coupons. Such registered bonds shall be for $1,000, or for such multiples thereof as, from time to time, the party of the first part, or its successors, may prescribe, and shall bear interest at the same rate as the surrendered coupon bonds and from the date of the last matured coupon thereof. In every case of such exchange the said Trustee forthwith shall cancel the surrendered bond or bonds and coupons, and shall deliver the same to the party of the first part, or its successors.

Whenever any such registered bond shall be surrendered for transfer, the party of the first part, or its successors, shall issue, and the said Trustee shall certify and deliver, to the Transferee, upon
6512 surrender and cancellation of the bond or bonds transferred, a like amount of new registered bonds for $1,000, or for such multiples of $1,000 as the party of the first part, or its successors, from time to time may authorize, and bearing interest at the same rate as the surrendered registered bond or bonds, but no registered bond may be converted into a coupon bond.

For any exchange of coupon bonds for registered bonds, and for any transfer of registered bonds without coupons, the party of the first part, or its successors, at its or their option, may make a charge not exceeding one dollar for each new registered bond issued upon such exchange or transfer.

Upon surrender by the party of the first part, or its successors, to the Trustee for cancellation of any coupon or registered bonds issued

hereunder and secured hereby, with a request that bonds be issued hereunder for the like amount at a reduced rate of interest, the Trustee shall certify and deliver to the party of the first part, or its successors, bonds issued hereunder and secured hereby to the amount at their face value of the bonds so surrendered, and carrying interest at such lower rate of interest than four per cent. per annum, payable semi-annually, as the party of the first part, or its successors, may prescribe in that behalf, and the new bonds so certified and delivered shall be entitled to share in the security of these presents with the like effect as if they had been bonds originally issued under this mortgage.

In case any coupon bond issued hereunder, with the coupons thereto appertaining, or any registered bond without coupons, shall
6513 become mutilated or be destroyed, the party of the first part, or its successors, in its or their discretion, may issue, and thereupon the said Trustee shall certify and deliver, a new bond of like tenor and date, bearing the same distinguishing number, in exchange and substitution for, and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond, or in lieu of, and substitution for, the coupon bond and its coupons, or the registered bond so destroyed, upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons, or of such registered bond, and upon receipt also of satisfactory indemnity.

Fourth. The party of the first part and its successors is and are to have the right, at its or their option, to redeem the bonds issued hereunder at par and accrued interest thereon upon giving previous notice of its or their intention so to do, by publication, at least twice a month for three successive months in one newspaper in New York and one newspaper in London, England, the first such publication to be at least six months prior to the date at which such bonds are called for redemption, and the interest upon such bonds shall cease at the time for which the same shall have been so called for redemption, unless the party of the first part, or its successors, should thereafter make default in the payment of said bonds at the rate above prescribed upon presentation thereof for the purpose.

Fifth. The party of the first part also covenants with the party of the second part that the party of the first part, its successors or assigns, shall and will punctually pay to the holders of the bonds aforesaid intended to be secured hereby the interest thereon
6514 when and as the same shall become due and payable according to the terms and conditions in the said bonds and coupons set forth and contained, and shall and will also, when the principal sums of the said bonds shall according to the provisions thereof become due and payable, fully and entirely pay, satisfy and discharge the whole of said bonds, both principal and interest.

Sixth. Until default shall be made in the payment of the principal or interest of the bonds authenticated hereunder and intended to be secured hereby, or some of them, the party of the second part, and its successors in this trust, shall permit and suffer the party of the

first part, its successors and assigns, to retain all the authority, powers, rights and privileges belonging or incident to the stock hereby pledged or agreed to be pledged or to the ownership thereof, not inconsistent with the rights of the party of the second part, or its successors in this trust, as herein expressed.

And it is likewise an express condition of this indenture that until default shall be made in the payment of the principal or interest of the bonds authenticated hereunder and intended to be secured hereby, or some of them, the Preferred and Common Stock of the said Central Pacific Railway Company pledged by the party of the first part, or its successors, with the party of the second part, or its successors, in trust upon the trusts herein declared, shall remain or be registered in the name of the said party of the first part, or its successors or its or their nominees or assigns, provided the certificates representing such stock assigned in blank, with irrevocable power of transfer executed by the registered owners, shall be de-
6515 posited with the party of the second part, or its successors in this trust, under and subject to the terms and conditions of this trust, the party of the first part, or other registered owners of such deposited stocks being entitled to have the same transferred upon the books of the Central Pacific Railway Company to such persons or parties as may be designated by it or them, provided arrangements satisfactory to the party of the second part, or its successors in this trust, are made for securing the deposit hereunder with the party of the second part, or its successors in this trust, of the new certificates representing such transferred stocks assigned in blank with irrevocable power of transfer executed by the registered owner or owners; and the person or persons, corporation or corporations, in whose name the said stock shall be registered, shall have and enjoy all the rights, powers and privileges of a stockholder with respect to the said shares of stock, including the voting power thereon, and the right to collect and receive any and all amounts which may from time to time be paid on account of dividends upon either class of the said stock or otherwise in respect thereof, except by way of distribution of capital, and shall be entitled to take any and all proceedings which the party of the first part or its successors or assigns, may deem requisite for the protection of its or their rights and interests under or in respect of the said stock.

Seventh. The party of the first part further covenants that, while the bonds issued hereunder remain outstanding, neither the
6516 Preferred nor the Common Stock of the Central Pacific Railway Company shall be increased beyond twenty million dollars ($20,000,000) par value of Preferred Stock and sixty-seven million two hundred and seventy-five thousand five hundred dollars ($67,275,500) par value of Common Stock, unless arrangements have been made for depositing hereunder (simultaneously with the issue of such increase of such stock) the same proportionate part of such increase of each class of stock as the stock of such class theretofore covered hereby was of the whole outstanding stock of such class as

existed before such increase, and the said Central Pacific Railway Company shall not be merged or consolidated with any other railroad company without the consent of the holders of a majority in amount of the bonds issued hereunder and then outstanding.

Eighth. While any of the bonds issued under this Indenture are outstanding, no new mortgage other than the First Refunding Mortgage and Three and One Half Per Cent. Mortgage of the Central Pacific Railway Company dated August 1st, 1899, shall be made of the properties covered by such Mortgages (except to refund the First Refunding Mortgage Bonds and Three and One Half Per Cent. Mortgage Bonds secured thereby or either of such issues), and the party of the first part agrees that, while any of the bonds issued under this indenture are outstanding, it will not, nor shall its successors or assigns, vote the stocks pledged hereunder or permit the same to be voted in favor of any new mortgage except as aforesaid, nor as owner of such deposited stocks will it assent thereto.

Ninth. The existing lease of the properties of the Central Pacific Railway Company to the party of the first part shall
6517 terminate in case the pledged stocks above referred to shall be sold under the provisions of this indenture in reference to the sale of such stocks in consequence of default of the party of the first part hereunder; and while any bonds are outstanding hereunder the party of the first part will not as the owner of such pledged stocks vote for or assent to any other lease of such properties, unless such lease shall have been approved by the holders of a majority in amount of the bonds outstanding hereunder, or shall contain a provision terminating the same in case such pledged stocks shall be so sold.

Tenth. In case default shall be made in the payment of the principal or interest of any of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, or in case of default under the provisions of Article Eighth hereof, then and in that event, and while such default shall thereafter continue, the party of the second part, or its successors in this trust, shall be entitled to transfer the deposited stock into its own name and to receive (when and as the same shall be paid) all amounts which may from time to time be paid on account of dividends upon the stock pledged hereunder or otherwise in respect thereof, and shall be entitled to exercise the voting power thereon, and otherwise exercise the rights, powers and privileges of a holder of such stock, and shall be entitled to take any and all proceedings which the party of the second part, or its successors in this trust, may deem requisite for the protection of its or their rights and
6518 interests under or in respect of the said stock.

Eleventh. In case default shall be made in the payment of the principal or interest of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, or in case of default under the provisions of Article Eighth hereof, then and in that event the party of the second part, and its successors in this trust, is and are hereby authorized and empowered,

at the request of the holders of one-fourth in amount of the said bonds then outstanding, to resort to any proceedings, legal or equitable, that may be deemed necessary or expedient for the enforcement of the lien hereby created upon all or any part of the Preferred or Common Stock pledged under the provisions of this trust. All moneys collected under the provisions of this or the preceding Article of this indenture shall be applied in the manner provided in the next Article of this indenture.

Twelfth. It shall also be lawful for the said party of the second part, and its successors in this trust, in case default shall be made as aforesaid by the party of the first part, and continued as aforesaid, upon like request of the holders of one-fourth in amount of the bonds issued and authenticated under the provisions of this indenture then outstanding (such default still continuing), to sell at public sale in the City of New York (after advertising notice of the time and place of such sale not less than once a week for six consecutive weeks in one or more daily newspapers published in the said City of New York)
all the stocks hereby pledged, which shall then be in its or
6519 their possession as Trustee or Trustees under the provisions
hereof, or such portions thereof as may be necessary to pay the outstanding bonds of the party of the first part, or its successors, secured hereby, and all arrears of interest thereon, and all expenses attending as well the execution of this trust as the said sale, and any other costs and charges that may be necessarily incurred in consequence of such sale; such sale to be made in such lots or parcels as the party of the second part, or its successors in trust, may deem most beneficial. The party of the second part, or its successors in trust, may adjourn the sale of the whole or any part of the said stock from time to time in its or their discretion, and may make sale thereof at such adjourned date without further advertisement, and may make all necessary deliveries and transfers to the purchaser or purchasers, discharged from all and every the trusts hereby created, and without liability on the part of the purchaser or purchasers to see to the application of the purchase money.

After deducting from the proceeds of such sale or sales the costs and expenses thereof, or which may have been necessarily incurred thereby, and sufficient moneys to indemnify itself or themselves for all advances which may have been made, and against all liabilities which may have been incurred, in the execution of this trust, as well as a reasonable compensation for its or their own services, the said party of the second part, or its successors in the trust, shall apply the residue of the said proceeds, or so much thereof as may be necessary, to or towards the payment and discharge, with pro rata equality, of
the principal and interest which shall then be due and unpaid
6520 upon all and singular of the said bonds issued by the party
of the first part or its successors hereunder, and then remaining outstanding and unpaid, and without preference of interest over principal or principal over interest, and so that no priority or preference shall be given to any bond which shall have been issued under

and be secured by this indenture, and be then due and outstanding over any other bond so issued and secured; and if any surplus of such moneys shall thereafter remain, then the said party of the second part, or its successors in trust, shall pay over such balance of the trust funds in its or their hands, and transfer and assign any residue of the trust estate or property, unto the said party of the first part, its successors or assigns. Any and every sale of Preferred or Common Stock made pursuant to the foregoing power shall absolutely bar and foreclose all right, interest and equity of redemption of the party of the first part, or its successors or assigns, in or to the stock so sold; and it is hereby expressly understood and agreed that in the event of any sale of the pledged stock pursuant to the provisions of this Article, the party of the second part, or its successors in this trust, may declare the principal of all the bonds issued by the party of the first part, or its successors, hereunder, and then unpaid and outstanding, to be due and payable forthwith, and thereupon the same shall become immediately due and payable, anything in the said bonds contained to the contrary thereof notwithstanding. And if it shall occur that after the exhaustion of all the stock hereby pledged as a security for the payment of the said bonds, or
6521 which shall be subject to the provisions of this trust, there shall be a deficiency in the payment of the principal or interest due on any of the bonds issued and authenticated under this indenture, then the party of the first part and its successors shall remain liable for the payment of such deficiency, and the said party of the second part, and its successors in this trust, is and are hereby authorized to take such further proceedings in law or equity as it or they may be advised to recover the same.

Thirteenth. In case default shall be made in the payment of the principal or interest of any of the bonds authenticated hereunder, and intended to be secured hereby, and such default shall continue for six months, then and in that event upon the written request of the holders of one-fourth in amount of the bonds hereby secured and then outstanding, the party of the second part, by notice in writing delivered to the party of the first part, shall declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately; and upon any such declaration the same shall become and be due and payable immediately, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that at any time after the principal of said bonds shall have been so declared to be due and payable and prior to the sale of the stocks pledged hereunder the holders of a majority in amount of the bonds hereby secured and then outstanding, by written notice to the party of the first part, and to the party of the second part, may rescind and annul such declaration and its consequences; but no such rescission and annulment
6522 shall extend to or shall affect any subsequent default or impair any right consequent thereon.

Fourteenth. The party of the first part from time to time will pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the shares of stock at any time pledged hereunder and subject to the lien hereof, or upon any part thereof, or upon the income and profits thereof, the lien of which upon such shares would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such shares; provided, however, that nothing contained in this section shall require the party of the first part to pay any such tax, assessment or charge so long as the party of the first part in good faith shall contest the validity thereof.

Fifteenth. The party of the first part agrees to use its best efforts to maintain and preserve the corporate existence of the Central Pacific Railway Company; and for such purposes it may from time to time sell, assign, transfer and deliver so many shares of the stock of the said Company as may be necessary to qualify persons to act as directors of, or in any other official relation to, said Company.

Sixteenth. In case of dissolution of the party of the first part, or the sale of its properties, or reorganization of its affairs, the deposited stocks may be dealt with and disposed of in such manner as may be agreed upon by the party of the first part, its successors or assigns, and the Trustee hereunder, or by the party of the first part, its successors or assigns, and the holders of a majority in amount
0523 of the bonds then outstanding hereunder and secured hereby, but all fruits and proceeds of such dealing with or disposition of said deposited stocks shall be held by the Trustee hereunder subject to the terms and conditions hereof; provided, however, that any assessments, contributions or cash payments made in respect of such deposited stocks by or on behalf of the party of the first part, its successors or assigns, or the Trustee hereunder or the holders of such bonds shall constitute a first charge, prior to the lien of these presents, upon such fruits or proceeds, and shall be forthwith repaid therefrom or from the sale of such portions thereof as may be requisite to provide for such repayment.

Seventeenth. In case of the resignation, insolvency, neglect or incapacity to act, of the said party of the second part, or any successor in this trust, the holders of a majority in interest of the bonds issued hereunder, then outstanding, may select or designate some other trust company or corporation authorized to hold and execute trusts of this nature, and the company or corporation so selected shall be thereupon entitled to receive and hold the pledged stocks belonging to this trust, upon the trusts herein mentioned and declared, and shall have all the rights and powers, and be subject to all the duties, expressed in this indenture. In case of a failure of the bondholders to fill such vacancy in the manner above prescribed, the President for the time being of the party of the first part, or its successors, shall make a temporary appointment for such vacancy, which shall con-

time until the holders of a majority in interest of said out-
6524 standing bonds shall have designated a new Trustee to act hereunder. When holders of a majority in interest of the said outstanding bonds shall by an instrument in writing, executed by themselves or their attorneys in fact, designate a new Trustee under this indenture, the estates, powers, rights and privileges of any Trustee hereunder under any such temporary appointment shall immediately cease and determine and be transferred to, and vest in, the new Trustee so designated, and such temporary Trustee shall upon request of the new Trustee execute and deliver any and all such assignments, transfers, or other instruments in writing as shall be requisite therefor, and thereafter such new Trustee shall hold such estates, rights, powers and privileges with like effect as if it had been designated as the party of the second part hereunder.

Eighteenth. Any and all costs, charges and expenses incurred in, or in respect of, or in connection with, the execution of this trust by or on behalf of the said party of the second part, or its successors in this trust, or for which the said party of the second part, or its successors in this trust, shall be or become in anywise liable or responsible, shall be borne and defrayed by the said party of the first part, and said party of the first part undertakes, covenants and agrees for itself, and its successors and assigns, that it and they will, upon demand, pay all such costs, charges and expenses, including therein just and reasonable compensation to said party of the second part, or its successors in this trust, for such services as it or they may be called upon to render in or about or in respect of the trust hereby created.

6525 Nineteenth. The party of the second part hereby accepts the trusts created and declared by this indenture, and shall and will, at the request of the party of the first part, or its successors, in accordance with the provisions of Article Third hereof, but not otherwise, certify the bonds intended to be hereby secured, and deliver the same to the party of the first part, or its successors. But it is hereby expressly understood and agreed that neither the said party of the second part, nor any successor in the trust hereby created, shall incur any responsibility or liability whatever by reason of permitting or allowing the said party of the first part, or its successors or assigns, to exercise the rights, privileges and authority hereinbefore reserved to said party of the first part, its successors or assigns, in regard to the stocks that now are, or may under the terms hereof become, subject hereto; and it is hereby further provided that neither the party of the second part, nor any successor in the trust hereby created, shall incur any responsibility or liability whatever, except for the negligent, willful or intentional breaches by such Trustee of the trust herein expressed and contained; and neither the said party of the second part, nor any successor in this trust, shall at any time be bound or required to undertake any proceeding at law or in equity, or other-

wise, for the protection of the bond-holders, involving expenditures of, or liability for, the payment of money, unless, if it shall see fit to require it, adequate indemnity against such liability or outlay be furnished by the bondholders asking such action or proceeding.

6526 Twentieth. The said party of the first part shall, from time to time, execute any further instruments or assurances necessary or requisite to carry out the purposes hereof.

Twenty-first. Any request or other instrument required by this indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor, and may be signed and executed by such bondholders in person or by agents appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture if made in the following manner:

The fact and date of the execution by any person of any such request or other instrument of writing may be proved by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the City of New York, that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution. The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or bankers, or other depositary, wherever situated, if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the time therein mentioned such person had on deposit with such depositary the

6527 bonds therein described. The ownership of registered coupon bonds, or of registered bonds without coupons, shall be proved by the Company's registers of such bonds. Such proof shall be prima facie evidence in favor of the Trustee with regard to any action by it taken under such request or other instrument. The bearer of any coupon bond hereby secured which at the time shall not be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether the same shall be registered or not, may be deemed and treated by the Company and the Trustee as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof, and for all other purposes; and no notice to the contrary shall affect the Company or the Trustee.

Twenty-second. In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure or otherwise, and such proceeding shall have been discontinued or abandoned because of any waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the

party of the first part and the Trustee shall be restored to their former position and rights hereunder in respect of the pledged stock, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

Twenty-third. The Company covenants and agrees that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bonds secured hereby, and that it will not, directly or indirectly, be
6528 a party to any arrangement therefor by purchasing or funding said coupons or claims for interest or registered bonds or in any other manner. In case the payment of any such coupon or claim for interest should be so extended by or with the consent of the company, such coupon or claim for interest so extended shall not be entitled in case of default hereunder to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder and outstanding, and of all coupons and claims for interest on such bonds, the payment of which has not been so extended; the intention of this agreement being to prevent any accumulation after maturity of coupons or claims for interest upon registered bonds.

Twenty-fourth. The Company will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor will it claim, take, or insist on, any benefit or advantage from any law now or hereafter in force, providing for the valuation, or appraisement, of the pledged properties, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by any State, to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws; and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will
6529 suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

Twenty-fifth. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a Receiver, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of default hereunder and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding shall have made written request upon the Trustee, and shall have afforded to it reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute

such action, suit or proceeding in its own name; nor unless, also, they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture, and to any action or cause of action for foreclosure or for the appointment of a Receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein
6530 provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

Twenty-sixth. Except as herein expressly provided to the contrary, no remedy herein conferred upon, or reserved to, the Trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

Twenty-seventh. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given hereunder to the Trustee or to the bondholders, may be exercised from time to time, and as often as may be deemed expedient by the Trustee, or by the bondholders severally and respectively.

Twenty-eighth. If the principal and interest of the bonds issued by the party of the first part, or its successors, hereunder, and intended to be secured hereby, shall be paid to the holders thereof when and as the said principal and interest shall become due, according to the tenor and effect of the said bonds and in accordance with the provisions of this indenture, thereupon the Trustee hereunder shall satisfy and discharge the lien of this indenture, and all the
6531 Preferred and Common Stock hereby pledged or agreed to be pledged which shall then remain in the hands of the said Trustee, and any residue of the trust estate or property, shall at once be transferred and delivered to the said party of the first part, its successors or assigns, and upon such transfer and delivery thereof the said Trustee shall be thenceforth discharged from further duties under this trust.

In Witness Whereof, the parties hereto have caused their respective corporate seals, attested by their respective Secretaries or Assistant Secretaries, to be hereunto affixed and these presents to be signed on

their behalf by their respective Presidents or Vice-Presidents on the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By THOS. H. HUBBARD, *Vice-President.*

(Seal of Southern Pacific Company.)

Attest:
I. E. GATES, *Asst. Secretary.*

UNION TRUST COMPANY OF NEW YORK,
By EDW. KING, *President.*

(Seal of Union Trust Company.)

Attest:
J. V. B. THAYER, *Secretary.*

6532 Mr. LOVETT: I offer in evidence Defendants' Exhibit 44, being copy of supplemental mortgage, dated December 29, 1899, from Southern Pacific Company to Union Trust Company of New York, trustee.

It is stipulated that the copy offered may be used with the same force and effect as the original, subject to correction.

Defendants' Exhibit 44 is as follows:

DEFENDANTS' EXHIBIT 44.

SOUTHERN PACIFIC COMPANY TO UNION TRUST COMPANY OF NEW YORK, TRUSTEE.

SUPPLEMENTAL MORTGAGE.

(Central Pacific Stock Collateral.)

Dated December 29, 1899.

Indenture made the twenty-ninth day of December, A. D. 1899, by and between the Southern Pacific Company, a corporation created, organized and existing under and by virtue of the laws of the State of Kentucky, party of the first part, and the Union Trust Company of New York, a corporation created, organized and existing under and by virtue of the laws of the State of New York, party of the second part.

Whereas, heretofore and under date of the first day of August, A. D. 1899, the said party of the first part executed an indenture to the said party of the second part to secure an issue of bonds of the party of the first part or its successors known as Four Per
6533 Cent. Gold Bonds (Central Pacific Stock Collateral), issued and to be issued for an aggregate principal sum not exceeding thirty-six million eight hundred and nineteen thousand dollars ($36,819,000) at any one time outstanding, and pledged and deposited with the party of the second part as security for such bonds

Preferred Stock of the Central Pacific Railway Company (a corporation created, organized and existing under the laws of the State of Utah) to the amount at its face value of twelve million dollars ($12,000,000), and Common Stock of said Central Pacific Railway Company to the amount at its face value of sixty-seven million two hundred and seventy-four thousand two hundred dollars ($67,274,200), to be held by the party of the second part and its successors in said Trust subject to the reservations, terms and conditions therein expressed, upon trust for the benefit of the several persons and corporations who should be or become holders respectively of any of the bonds issued or to be issued thereunder by the party of the first part or its successors; and,

Whereas the party of the first part has received from the Readjustment Managers mentioned in the Central Pacific Plan and Agreement of Readjustment, dated February 8, 1899, viz., Messrs. Speyer & Company of New York, Messrs. Speyer Bros. of London, Mr. Laz Speyer Ellissen of Frankfort-on-the Main, Messrs. Teixeira de Mattos Bros. of Amsterdam and the Deutsche Bank of Berlin, certificates duly endorsed in blank, representing in the aggregate, shares of the Capital Stock of the Central Pacific Railroad Company (a corporation created, organized and existing under the laws of the State of California) to the amount at their par value of sixty-seven
6534 million and six thousand three hundred dollars ($67,006,300), such certificates having been received by the party of the first part upon the understanding and agreement with such Readjustment Managers that it would pledge and deposit with the party of the second part to these presents, subject to the terms, conditions and provisions embodied herein, certificates representing in the aggregate such shares of the Capital Stock of the said Central Pacific Railroad Company to the amount at their par value of sixty-seven million and six thousand three hundred dollars ($67,006,300).

Now, Therefore, This Indenture Witnesseth, That the parties hereto, in consideration of the premises and of one dollar to each by the other in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, do each covenant, promise and agree for themselves and their respective successors and assigns in manner and form following, that is to say:

First. The said party of the first part has simultaneously with the execution hereof pledged and deposited with the said party of the second part certificates duly issued to and in the name of the party of the first part or its nominees, and assigned by it or them in blank, with irrevocable power to transfer the same, representing shares of the Capital Stock of the said Central Pacific Railroad Company to the amount at its par value of sixty-seven million and six thousand three hundred dollars ($67,006,300). The said certificates so pledged and deposited with the party of the second part are to be held by
6535 the said party of the second part and its successors in this trust subject to the like reservations, terms and conditions in

respect thereto, which in said Indenture dated the first day of August, 1899, are expressed and prescribed in respect to the certificates representing Preferred and Common Stock of the Central Pacific Railway Company which were pledged and deposited with the party of the second part thereunder, and upon trust for the benefit of the several persons and corporations who shall be or become holders respectively of any of the bonds issued or to be issued, under said Indenture dated the first day of August, 1899, by the party of the first part or its successors, to secure to such holders equally without preference of one over another, by reason of priority of time of issue thereof or otherwise, the due and punctual payment of said bonds and the interest thereon as it shall become due, according to the tenor and effect of the said bonds and the interest coupons attached thereto.

Second. Until default shall be made in the payment of the principal or interest of the said bonds, or some of them, the party of the second part, and its successors in this trust, shall permit and suffer the party of the first part, its successors and assigns, to retain all the authority, powers, rights and privileges belonging or incident to the stock hereby pledged or agreed to be pledged, or to the ownership thereof, not inconsistent with the rights of the party of the second part, or its successors in this trust, as herein expressed or provided.

And it is likewise an express condition of this Indenture
6536 that until default shall be made in the payment of the principal or interest of the said bonds, or some of them, the stock of the said Central Pacific Railroad Company pledged by the party of the first part, or its successors, with the party of the second part, or its successors, in trust, upon the trusts herein declared, shall remain or be registered in the name of the said party of the first part, or its successors, or its or their nominees or assigns, provided the certificates representing such stock assigned in blank, with irrevocable power of transfer executed by the registered owners, shall be deposited with the party of the second part, or its successors in this trust, under and subject to the terms and conditions of this trust, the party of the first part, or other registered owners of such deposited stock being entitled to have the same transferred upon the books of the Central Pacific Railroad Company to such persons or parties as may be designated by it or them, provided arrangements satisfactory to the party of the second part, or its successors in this trust, are made for securing the deposit hereunder with the party of the second part, or its successors, in this trust, of the new certificates representing such transferred stocks, assigned in blank, with irrevocable power of transfer executed by the registered owner or owners; and the person or persons, corporation or corporations, in whose name the said stock shall be registered, shall have and enjoy all the rights, powers and privileges of a stockholder with respect to the said shares of stock, including the voting power thereon, and the right to collect and receive any and all amounts which may from time to time
6537 be paid on account of dividends upon said stock or otherwise in respect thereof, except by way of distribution of capital,

and shall be entitled to take any and all proceedings which the party of the first part, or its successors or assigns, may deem requisite for the protection of its or their rights and interests under or in respect of said stock.

Third. In case any default in the payment of the principal or interest of any of said bonds or under the provisions of Article Eight of said mortgage dated the first day of August, 1899, shall be made and continued as prescribed therein, then the party of the second part hereunder, or its successor in this trust, shall be thereupon entitled to exercise the same powers and be subjected to the like duties in respect to the stock pledged hereunder as it is in said mortgage provided that it shall be entitled to exercise, or shall be subjected to, in respect to the Preferred and Common Stock of the Central Pacific Railway Company pledged thereunder, with the like effect in all respects as if the provisions of said mortgage dated the first day of August, 1899, were herein repeated in respect to the stock pledged hereunder.

Fourth. The party of the first part further covenants that, while the bonds issued under said mortgage of August 1, 1899, remain outstanding, the stock of the Central Pacific Railroad Company shall not be increased beyond sixty-seven million two hundred and seventy-five thousand five hundred dollars ($67,275,500), par value, unless arrangements have been made for depositing hereunder (simultaneously with the issue of such increase of such stock) the
6538 same proportionate part of such increase of stock as the stock theretofore covered hereby was of the whole outstanding stock as it existed before such increase, and the said Central Pacific Railroad Company shall not be merged or consolidated with any other railroad company without the consent of the holders of a majority in amount of the bonds issued under said mortgage of August 1, 1899, and then outstanding.

Fifth. The existing lease to the party of the first part of properties conveyed by the Central Pacific Railroad Company to the Central Pacific Railway Company by Indenture and Agreement dated July 29, 1899, shall terminate, in case the pledged stock above referred to shall be sold under the provisions of this indenture in reference to the sale of such stock in consequence of default of the party of the first part under said mortgage of August 1, 1899; and while any bonds are outstanding under said mortgage of August 1, 1899, the party of the first part will not, as the owner of such pledged stock, vote for or assent to any other lease of such properties, unless such lease shall have been approved by the holders of a majority in amount of the bonds outstanding under said mortgage of August 1, 1899, or shall contain a provision terminating the same in case such pledged stock shall be so sold.

Sixth. In case of dissolution of the Central Pacific Railroad Company, the stock deposited hereunder may be dealt with and disposed of in such manner as may be agreed upon by the party of the first

part, its successors or assigns, and the Trustee hereunder, or by the party of the first part, its successors or assigns, and the holders
6539 of a majority in amount of the bonds then outstanding under said mortgage of August 1, 1899, and secured thereby; but all fruits and proceeds of such dealing with or disposition of said deposited stock shall be held by the Trustee hereunder subject to the terms and conditions hereof: provided, however, that any cash payments made in respect of such deposited stock by or on behalf of the party of the first part, its successors or assigns, or the Trustee hereunder, or the holders of such bonds, shall constitute a first charge, prior to the lien of these presents, upon such fruits or proceeds, and shall be forthwith repaid therefrom or from the sale of such portions thereof as may be requisite to provide for such repayment.

Seventh. Any successor or substitute Trustee under the trusts expressed in the said mortgage dated the first day of August, 1899, shall forthwith, and by virtue of that fact alone, become the successor or substitute Trustee under this Indenture, and such successor or substitute Trustee shall be thereupon entitled to receive and hold the pledged stock belonging to this trust upon the trusts herein mentioned and declared, and shall have all the rights and powers, and be subject to all the duties expressed or provided in this Indenture, with the like effect as if it had been designated as the party of the second part hereunder.

Eighth. The party of the first part from time to time will pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the shares of stock at any time pledged hereunder and subject to the lien hereof, or upon any part thereof, or upon the
6540 income and profits thereof, the lien of which upon such shares would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such shares; provided, however, that nothing contained in this section shall require the party of the first part to pay any such tax, assessment or charge so long as the party of the first part in good faith shall contest the validity thereof.

Ninth. If the principal and interest of the bonds issued by the party of the first part or its successors under said mortgage dated the first day of August, 1899, shall be paid to the holders thereof when and as the said principal and interest shall become due, according to the tenor and effect of the said bonds and in accordance with the provisions of said mortgage, thereupon the Trustee hereunder shall satisfy and discharge the lien of this indenture and all stock hereby pledged or agreed to be pledged which shall then remain in the hands of the said Trustee and any residue of the trust estate or property shall at once be transferred and delivered to the said party of the first part, its successors or assigns, and upon such transfer and delivery thereof the said Trustee shall be thenceforth discharged from further duties under this trust.

In witness whereof, the parties hereto have caused their respective corporate seals, attested by their respective Secretaries or Assistant Secretaries, to be hereunto affixed and these presents to be signed on their behalf by their respective Presidents or Vice-Presidents on the day and year first above written.

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SOUTHERN PACIFIC COMPANY,
By C. P. HUNTINGTON, *President.*

(So. Pac. Co. Seal.)

Attest:
I. E. GATES,
Asst. Sec'y.

UNION TRUST COMPANY OF NEW YORK,
By EDW'D KING, *President.*

(U. T. Co. Seal.)

Attest:
J. V. B. THAYER,
Secretary.

No. 993.—In Equity.

IN THE

Circuit Court of the United States

FOR THE DISTRICT OF UTAH.

THE UNITED STATES OF AMERICA,
Complainant.

v.

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY; THE OREGON RAILROAD & NAVIGATION COMPANY; THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; FARMERS LOAN & TRUST COMPANY; EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO K. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, AND WILLIAM A. CLARK,
Defendants.

ORDER POSTPONING DATE OF HEARING.

Upon application of the defendants, and by consent of plaintiff, by their respective solicitors, the hearing of evidence on behalf of the defendants in the above-entitled cause heretofore appointed for the 4th day of October, A. D. 1909, at Room 515, Custom-House Building, Bowling Green, New York City, at the hour of 10.30 o'clock a. m., is postponed until Monday, the 1st day of November, A. D. 1909, at the same hour and place.

Done at the office of the Special Examiner, Denver, Colorado, this 1st day of September, A. D. 1909.

SYLVESTER G. WILLIAMS,
Special Examiner.

UNITED STATES CIRCUIT COURT.

DISTRICT OF UTAH.

UNITED STATES OF AMERICA,
Complainant,
vs.
UNION PACIFIC RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, ET AL.,
Defendants.
} Order.

The above-entitled cause came on to be heard this 23d day of October, A. D. 1909, upon a motion of the defendants for an order directing the postponement of the date for taking testimony on the part of said defendants before Mr. Sylvester G. Williams, Special Examiner, the complainant appearing by C. A. Severance, special assistant to the Attorney-General, and the defendants by N. H. Loomis, esq., John W. Lacey, esq., and P. F. Dunne, esq.

The said motion was heard upon the affidavits offered in support thereof and in opposition thereto. Upon due consideration it is ordered that, upon condition that the defendants in said cause shall agree to complete the taking of their testimony before said Special Examiner on or before March 19, 1910, which condition is now accepted and agreed to by the defendants, the further taking of testimony on their part now set for November 1, 1909, at the Custom House in the City of New York, be and the same is hereby postponed until Monday, January 3, 1910, at 10.30 o'clock in the forenoon, at Room 515, in the Custom House, Bowling Green, New York City, N. Y.

(Signed) WILLIS VAN DEVANTER,
Circuit Judge.

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